134-332

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~1321~~ 615

THE COUNTY OF MACON, THE JUSTICES THEREOF AND THE TREASURER OF SAID COUNTY, RESPONDENTS,
Plaintiffs in Error,

vs.

ALFRED HUIDEKOPER, *Defendant in Error.*

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE CENTRAL DIVISION OF THE WESTERN DISTRICT OF MISSOURI.

Filed, ~~October~~ Dec. 14 1887.

SUPREME COURT OF THE UNITED STATES.

No._____

THE COUNTY OF MACON, THE JUSTICES THEREOF AND THE TREASURER OF SAID COUNTY, RESPONDENTS,
Plaintiffs in Error,

vs.

ALFRED HUIDEKOPER, *Defendant in Error.*

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE CENTRAL DIVISION OF THE WESTERN DISTRICT OF MISSOURI.

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UNITED STATES OF AMERICA, *ss.*

THE PRESIDENT OF THE UNITED STATES.

To the Honorable the Judges of the Circuit Court of the United States for the Central Division of the Western District of Missouri, greeting:

[L. S.]

BECAUSE, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Circuit Court, before you, at the April Term, 1887, thereof, between the United States *ex rel.* Alfred Huidekoper, plaintiff, and the County Court of Macon County, the Justices thereof and the Treasurer of said County, defendants, a manifest error hath happened, to the great damage of the said County Court of Macon County, the Justices thereof and the Treasurer of said County, defendants, as by their complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, D. C., on the second Monday of October next, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

WITNESS, the Honorable Morrison R. Waite, Chief-Justice of the Supreme Court of the United States, this fifteenth day of June, in the year of our Lord One Thousand Eight Hundred and Eighty-seven.

Issued at office in the City of Jefferson, with the seal of the Circuit Court of the United States, for the Western District of Missouri, Central Division, dated as aforesaid.

H. C. GEISBERG,
Clerk Circuit Court United States, Western District of Missouri, Central Division.

Allowed by— A. KREKEL, *Judge.*

Return to Writ.

UNITED STATES OF AMERICA,
Western District of Missouri,
Central Division.
} *ss.*

In obedience to the command of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the record and proceedings in the within entitled case together with all things concerning the same.

In witness whereof, I hereto subscribe my name and affix the seal of said Circuit Court, at the City of Jefferson, this first day of October, A. D. 1887.

[SEAL.] H. C. GEISBERG, Clerk.

No. 1392.

UNITED STATES CIRCUIT COURT,
FOR CENTRAL DIVISION
Of Western District of Missouri.

U. S. *ex rel.* A. HUIDEKOPER,
vs.
MACON COUNTY COURT *et al.*

WRIT OF ERROR

To the Circuit Court of the United States for the Central Division of the Western District of Missouri.

RETURNED AND FILED,
——— day of ——— 187 .
———
Clerk.

THE UNITED STATES OF AMERICA,

To Alfred Huidekoper or his Attorney of Record—Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, D. C., on the second Monday of October next, pursuant to a writ of error, filed in the Clerk's office of the Circuit Court of the U. S. for the Central Divis. of Western District of Missouri, wherein the County Court of Macon County, the Justices thereof, and the Treasurer of said County of Macon and State of Missouri, are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Arnold Krekel, one of the Judges of the Circuit Court of the Central Division of Western District of Missouri, this fifteenth day of June, in the year of our Lord One Thousand Eight Hundred and Eighty-seven.

A. KREKEL, *Judge.*

UNITED STATES OF AMERICA,

Western District of Missouri, ss.

I hereby acknowledge due service of the within Citation, this twenty-second day of June, A. D. 1887.

JOSEPH SHIPPEN,

Attorney for Defendant in Error.

(ENDORSED.)

No. 139.

UNITED STATES CIRCUIT COURT,

FOR CENTRAL DIVISION

Of Western District of Missouri.

UNITED STATES *ex rel.* A. HUIDEKOPER,

vs.

MACON COUNTY COURT *et al.*

CITATION.

Filed——188

Clerk.

UNITED STATES OF AMERICA,
Central Division of the Western District of Missouri. } *Sct.*

Pleas before the Honorable Circuit Court of the United States, in and for the Central Division of the Western District of Missouri, at the April Term, A. D. 1887, thereof in the case of

ALFRED HUIDEKOPER, relator,
vs.
MACON COUNTY COURT. } No. 1392.

Be it remembered that heretofore to wit, at a regular stated term of the Circuit Court of the United States in and for the Eastern Division of the Western District of Missouri, begun and held in the City of Jefferson, on the third Monday of November, 1879, the following proceedings were had in this case on the 13th day of March, A. D. 1880, to wit:

ALFRED HUIDEKOPER, rel.
vs.
MACON COUNTY COURT. } No. 1392.

This day there is received by mail from Joseph Shippen, Esq., attorney for relator, and presented to the court an information for mandamus against the County Court of Macon County and the Justices thereof; on consideration whereof it is ordered that an alternative writ of mandamus issue herein returnable on the first day of the next term of this court against the County Court of Macon County commanding it to order the issue to relator of a warrant on the general funds of said county for the amount of the judgment in the information described with interest and costs and to pay the same according to law.

And said information so filed and presented is in the words and figures following, to wit:

(Information.)

In the Circuit Court of the United States for Eastern Division of the Western District of Missouri.

ALFRED HUIDEKOPER,
vs.
MACON COUNTY.

To the Honorable Circuit Court of the United States, for the Western District of Missouri, Eastern Division.

Your petitioner, Alfred Huidekoper, who is a citizen of the State of Pennsylvania, states that on the 19th day of November, 1879, he recovered in this Court a judgment for twenty-eight thousand and thirty-three dollars and costs against Macon County, a municipal corporation, created and existing under the laws of the State of Missouri, whose business and financial affairs are administered by a County Court composed of officers of said County, citizens of said State of Missouri; that said judgment was based upon coupons for interest detached from bonds issued by said County to the Missouri and Mississippi Railroad Company, to aid in the construction of its railroad, pursuant to an act of the General Assembly of the State of Missouri, entitled "An act to incorporate the Missouri & Mississippi Railroad Company," approved February 20, 1865; that petitioner made demand upon the said County Court of Macon County to order the issue to him of a warrant on the general funds of said County for the amount of said judgment and cause the same to be issued, which demand was refused, as will appear by the order of said Court hereto appended and made part hereof.

Wherefore your petitioner being without other remedy at law, prays this Honorable Court for a writ of mandamus directed to the said County Court of Macon County, commanding it to order the issue to petitioner of a warrnt on the general funds of said County and cause the same to be issued forthwith, for the amount of said judgment with interest and costs, or show cause at the next term of this Court why they have not done so, and he will ever pray, etc.

ALFRED HUIDEKOPER,
by Joseph Shippen, *Attorney.*

STATE OF MISSOURI, }
CITY OF ST. LOUIS, } *ss.*

Joseph Shippen, being duly sworn, says he is the attorney for above petitioner, and the facts above stated are true.

JOSEPH SHIPPEN.

Sworn to and subscribed before me this 11th day of March, 1880.

C. M. WARD,
U. S. Commissioner Eastern Dist. of Missouri,

(Exhibit attached to information.)

STATE OF MISSOURI, } ss.
COUNTY OF MACON, }

I, James G. Howe, Clerk of the County Court, within and for the County and State aforesaid, certify that the following order was made by said Court at the March term, 1880, thereof, to wit:

(Order No. 4—March 3d, 1880.)

"Now comes Alfred Huidekoper, by his attorney, Jos. Shippen, and presents a demand on the Court for a warrant on the general funds of the County, in payment of a judgment, obtained in the U. S. Circuit Court, for the Eastern Div. of the Western Dist of Missouri, for the sum of $28,032,—vs. Macon County, on coupons detached from bonds issued to the M. & M. Railroad Company, which demand is hereby refused by the Court. But it is hereby ordered that a warrant be drawn in favor of said Huidekoper, on the special M. & M. Railroad fund, for the amount of said judgment, and interest thereon to this date, amounting to $28,522.56."

IN TESTIMONY WHEREOF, I hereto set my hand, and affix the seal [SEAL.] of said Court, at Macon, this 5th day of March, 1880.

JAS. G. HOWE,
Clerk Macon County Court.

And afterwards, on the 15th day of March, 1880, there was issued out of the Clerk's office of said Circuit Court an alternative writ of mandamus, in the words and figures following, to wit:

(Alternative writ of mandamus.)

EASTERN DIVISION OF THE WESTERN DISTRICT OF MISSOURI,—*Sct. The President of the United States of America.*

To the County Court of Macon County and the Justices thereof, Greeting:

WHEREAS, It has been represented to our Circuit Court of the United States, in and for the Eastern Division of the Western District of Missouri, that Alfred Huidekoper is a citizen of the State of Pennsylvania, and that the County of Macon is a municipal corporation created and existing under the laws of the State of Missouri, whose busi-

ness and financial affairs are administered by a county court composed of officers of said county, citizens of said State of Missouri, that, on the 19th day of November, 1879, said Alfred Huidekoper recovered a judgment against said Macon County for the sum of twenty-eight thousand and thirty-three dollars and costs taxed at one hundred and seven dollars and twenty cents; that said judgment was based upon coupons for interest detached from bonds issued by said County to the Missouri and Mississippi Railroad Company to aid in the construction of its railroad, pursuant to an act of the General Assembly of the State of Missouri, entitled "An act to incorporate the Missouri and Mississippi Railroad Company, approved February 20, 1865;" that demand has been made upon the said County Court of Macon County to order the issue of a warrant on the General Funds of said county for the amount of the above judgment, and cause the same to be issued, which demand was refused, and that the said relator is without other adequate remedy at law.

Now, therefore you, the said County Court of Macon County and the Justices thereof, are hereby commanded to order the issue of a warrant to the relator on the general funds of said county and to cause the same to be forthwith issued for the amount of the above judgment with interest at the rate of six per cent. per annum and costs, and also the costs of this proceedings as endorsed on this writ; or show cause on the first day of the next term of our said court (April 19, 1880,) why you refuse so to do.

WITNESS the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, the 15th day of March, A. D. 1880. Issued at office in the city of Jefferson in said district, under the seal of said Circuit Court the day and year last aforesaid.

[SEAL]

H. C. GEISBERG,
Clerk of said Court.

Upon said alternative writ the United States Marshal for said District, made the following return, to wit:

Marshal's Return.

I hereby certify that I executed this writ of mandamus by leaving a writ of which this is a duplicate with each of the following named justices of the County Court of Macon County, Missouri, in person, namely: J. H. Osborn & Evans Wright in the county of Macon, on the

16th day of March, A. D. 1880, and further, that I was unable to find Charles R. Perry, the other justice of said court.

All done in East Division of the Western District of Missouri.

C. C. ALLEN,
U. S. Marshal.

By C. C. Crippen, *Deputy.*

And afterwards at a regular stated term of said Circuit Court, begun and held at the place aforesaid, on the third Monday of April, 1880, the following further proceedings were had in said case on the 19th day of April, 1880, to wit:

ALFRED HUIDEKOPER, rel.,
vs.
MACON COUNTY COURT. } No. 1392.

This day come the respondents by Ben E. Guthrie, Esq., and file a return to the alternative writ of mandamus heretofore issued in the above cause.

And said return so filed as aforesaid, is in the words and figures following, to wit:

Return.

In the Circuit Court of the United States for the Eastern Division of the Western District of Missouri, April Term, 1880.

THE UNITED STATES EX REL., ALFRED HUIDEKOPER, Plaintiff,
vs.
MACON COUNTY COURT AND THE JUDGES THEREOF, Respondents.

Now at this day come the respondents, the Judges of the County Court of Macon county, Missouri, and for return to the alternative writ of mandamus issued in the above entitled cause, or so much thereof as they are advised that it is material for them to answer, and admit that on the 19th day of November, 1879, Alfred Huidekoper, the relator, recovered judgment against Macon County, in the State of Missouri, for the sum of $28,033, and costs which were taxed at $107.20. That said judgment was based upon coupons for interest detached from bonds issued by said county to the Missouri & Mississippi Railroad Company to aid in the construction of its railroad pursuant to an act of the General Assembly of the State of Missouri, entitled "An act to incorporate the Missouri & Mississippi Railroad Company," approved

February 20, 1865. That demand was made upon the said County Court on the third day of March, 1880, to order the issue of a warrant on the general funds of said county for the amount of said judgment and to cause the same to be issued, which demand was refused for the reasons hereinafter stated.

The respondents for further return to said alternative writ of mandamus state that under and by virtue of the act of the General Assembly of the State of Missouri before mentioned the corporation therein named on the —— day of September, 1866, organized under and accepted the provisions of said act, and thereby became a body politic and corporate under the name of the Missouri & Mississippi Railroad Company; that in and by said act said Missouri & Mississippi Railroad Company was authorized to locate and build a railroad from the town of Macon, in the County of Macon, in the State of Missouri through the town of Edina, in the County of Knox, and thence to or near the northeast corner of the State of Missouri in the direction of Keokuk, in Iowa, or Alexandria, in Missouri, and from the town of Macon in a southwesterly direction to the Missouri River; that at the time of Macon County making the subscription and issuing the bonds with interest coupons to the Missouri & Mississippi Railroad Company as hereinafter stated, Macon County, under the Constitution and General Statutes of the State of Missouri, had no authority to make said subscription and issue said bonds and coupons without the assent of two-thirds of the qualified voters of Macon County, given at a regular or special election held in said county for the purpose of obtaining said assent, except the authority which was conferred on it by the 13th section of the charter of the Missouri & Mississippi Railroad Company, which is as follows: "It shall be lawful for the corporate authorities of any city or town or County Court of any county desiring so to do, to subscribe to the capital stock of said company, and may issue bonds therefor and levy a tax to pay the same not to exceed one-twentieth of one per cent. upon the assessed value of the taxable property for each year."

That in and by the authority conferred upon Macon County Court by said section alone and by no other authority or power Macon County Court on the 12th day of April, 1870, subscribed the sum of $175,000 on behalf of Macon County to the capital stock of the Missouri & Mississippi Railroad Company, and issued bonds in the sum $1,000 each to it for the aggregate amount of $175,000 in payment of said subscription, said bonds were dated the 2d day of May, 1870, with interest coupons attached at the rate of 8 per cent. per annum, payable semi-annually, and the bonds were payable twenty years after date. Interest and

principal were both payable at the Bank of Commerce in the city of New York; that said subscription was made and said bonds and coupons were issued without the assent of two-thirds of the qualified voters of Macon County, no election, regular or special, having been held in said county for the purpose of obtaining said assent, but on the contrary said subscription was made and said bonds and coupons issued by Macon County Court against the wishes of nine-tenths of the qualified voters of Macon County.

That said judgment in favor of the relator was recovered on coupons detached from a portion of said bonds issued by Macon County in payment of said subscription to said Missouri & Mississippi Railroad Company as aforesaid, and it is recited on the face of said bonds that they were issued under and pursuant to orders of the County Court of Macon County as authorized by said act of the General Assembly of the State of Missouri, and the only part of said act which confers any authority upon Macon County Court to make said subscription and issue said bonds and coupons is the 13th section thereof, which is hereinbefore recited; that neither the County Court of Macon County nor any other officer or agent of Macon County had any authority to make said subscription or issue of said bonds and coupons, except the authority which is conferred on Macon County Court by said 13th section of said act.

That said subscription was made, said debt was made, and said bonds and coupons were issued by Macon County to said Missouri and Mississippi Railroad Company as aforesaid, with express reference to payment only out of the money to be derived from the levy of a special tax of 1-20 of one per cent. each year upon the assessed value of all the taxable property of Macon County. That Macon County Court at the time of making said subscription and issuing said bonds and coupons had no authority and it has no authority now to levy any other tax than said special tax of 1-20 of one per cent. to pay said bonds and coupons.

That under and by virtue of the 13th section of said act, which is hereinbefore recited, the County Court of Macon County has each and every year since the issue of said bonds and coupons as aforesaid levied a special tax of 1-20 of one per cent. upon the assessed value of all the taxable property in said County and caused the same to be extended on the tax books of said County for each year, and had such special tax collected for the purpose of paying said bonds and coupons.

That the aggregate valuation of all the taxable property in Macon County always has been and is now less than six millions of dollars.

That the constitution of the State of Missouri limits the power of the County Court of Macon County in levying taxes for county purposes as follows:

"For county purposes the annual rate on property in counties having six million dollars or less shall not in the aggregate exceed 50 cts. on the $100 valuation."

That at the time of making said subscription and issuing said bonds and coupons as hereinbefore stated, Macon County Court was, ever since has been and still is limited in levying taxes for County purposes by the 165th section of the 118th chapter of Wagner's Missouri Statutes, as follows:

"The several County Courts are empowered to levy such sums as may be annually necessary to defray the expenses of their respective Counties by a tax upon all property and licenses made taxable by law for State purposes * * * * * but the county tax in no case shall exceed 1-2 of one per cent. on the taxable property."

That in and by authority of said section Macon County Court has each and every year since the making of said subscription and issuing said bonds and coupons as aforesaid, levied a tax of 1-2 of one per cent. upon all property and licenses made taxable by law for State purposes for the purpose of annually defraying the expenses of carryon and administering the government in Macon County.

That the money derived from the levy of said special tax of 1-20 of one per cent. is inadequate to pay said bonds and coupons as they mature and fall due, and the money derived from said annual tax of 1-2 of one per cent. is all annually absorbed in defraying the expenses of carrying on and administering the government in Macon county, although said money is administered with all the prudence and economy of which these respondents are capable. That Macon County has no money in the treasury with which to pay the relator's judgment, if the warrant were drawn on the general funds therefor, as commanded by said alternative writ of mandamus.

That judgments to the amount of $85,000 had been rendered against Macon County in this Honorable Court and in the Circuit Court of Macon County, prior to the rendition of relator's judgment, which still remain in full force unreversed and unsatisfied, and Macon County has neither money nor property with which to pay said judgments.

That these respondents as Judges of Macon County Court, have no legal authority to levy any other or greater taxes than the taxes hereinbefore stated.

These respondents further state that they, as Judges of Macon County Court, are authorized and empowered by laws of the State of

Missouri to audit, adjust and settle all unadjusted and unsettled accounts against Macon County and to which said County is a party, and to order the payment of any sum of money which may be found by these respondents as Judges of Macon County to be due by Macon County, and to order a warrant to be drawn upon the Treasurer thereof for the amount so found due to be paid out of the treasury of said County, and to order their clerk to draw and issue such warrant. But the statutes of the State of Missouri which were in force at the time said subscription was made and said bonds and coupons were issued to said Missouri & Mississippi Railroad Company as hereinbefore stated, expressly required that each and every warrant which they were authorized to order to be drawn must express upon its face the particular fund out of which the Treasurer of said County must pay said warrant, and said statutes which are now in force expressly require that each and every warrant express upon its face the particular fund out of which the Treasurer must pay said warrant, and said Treasurer is expressly prohibited by said statutes from paying such warrant out of any funds in the treasury other than the fund mentioned in said warrant, and it expressly made a criminal offense by the statutes of said State for the County Court of any County in said State, or any member thereof, to knowingly vote for the appropriation, disposition or disbursement of any money belonging to any County other than the specific purpose for which the same was levied, assessed, collected and appropriated. That at the time of making said subscription and issuing said bonds and coupons there were no such funds known to the laws or statutes of the State of Missouri as the funds described in said alternative writ of mandamus, to wit: "The general funds of said County," and there are no such funds now. That if these respondents as Judges of Macon County Court were to draw, or to order their clerk to draw a warrant in favor of the relator upon the Treasurer of Macon County for the amount of this judgment, interest and costs payable out of the general funds of said County as commanded by said alternative writ of mandamus, there is, and legally there can be no such funds established, set apart or appropriated for the payment of such warrant, and out of which the Treasurer of Macon County would be authorized by law to pay such warrant, except the funds derived from the levy and collection of one-twentieth of one per cent. and a warrant in the form required in the writ of mandamus would not comply with the requirements of the statutes of the State of Missouri in such cases made and provided. That if these respondents were to draw or cause to be drawn a warrant in favor of relator in form required by said writ there is no fund, and according to the stat-

utes of the State of Missouri there will be no fund in the treasury of Macon County out of which said warrant could be paid by the Treasurer thereof, except the money derived from the levy and collection of one-half of one per cent. which is required by the statutes of the State of Missouri to be annually levied, assessed and collected for the express purpose of defraying the necessary expenses of carrying on and administering the government of Macon County, and the money derived from this tax is declared by said statutes to be held sacred for this purpose and it is and would be a violation of said statutes to appropriate and divert it to the payment of the relator's judgment, interest and costs, or to a warrant drawn in favor of the relator therefor, for the reason that said judgment is not an expense or debt incurred by Macon County in the administration of the Government in said county. That if a warrant should be drawn in favor of the relator, as required by said writ, and the same should be paid out the money derived from said last mentioned tax, and the other judgments hereinbefore mentioned, which were recovered on similar bonds and coupons against Macon County, should be required to be paid out of said money in the order of the presentation of the warrants therefor, there would be no money left in the treasury of Macon County with which to defray the ordinary expenses thereof, and the result would be that it would operate a suspension and perhaps a disorganization of the government in Macon County.

That the respondents, as judges of Macon County Court, have ever since the rendition of the judgment in favor of relator, been ready and willing to draw a warrant in favor of the relator for the full amount of his judgment, interest and costs upon the treasurer of Macon County, to be paid out of the special fund derived from the levy and collection of said special tax of 1-20 of one per cent., and on the 3d day of March, 1880, whilst in their capacity of the County Court of Macon County, made an order and had the same entered of record that a warrant be drawn in favor of the relator for the amount of his judgment, interest and costs to that date, to be paid out of said special fund, but the relator declined to accept a warrant so drawn.

These respondents, as judges of Macon County Court, say they have no legal authority or power to draw a warrant on the treasurer of Macon County in favor of the relator for the amount of his judgment, interest and costs, upon the fund described in said writ as therein commanded; and they say they have no legal authority or power to draw a warrant on the treasurer of Macon County in favor of the relator for the amount of said judgment, interest and costs, upon any

other or different fund than said special fund derived from the levy and collection of said special tax of 1-20 of one per cent.

These respondents say that the Missouri & Mississippi Railroad Company has never built any railroad through or into Macon County, and there is no prospect that it will ever be, as it is hopelessly insolvent; and these respondents further say that Macon County has fully complied with and performed said contract between it and said Missouri & Mississippi Railroad Company, and the holders of its bonds, as aforesaid, including the relator. And they set up and plead the foregoing facts as the reasons why the judges of Macon County Court do not issue, or order to be issued, a warrant in favor of the relator on the general funds of said county as commanded by said alternative writ of mandamus. Wherefore, having made full return to said alternative writ of mandamus, and shown good, valid, legal reasons why they should not obey the commands thereof, they ask to be discharged with their costs incurred in making this return.

JOHN H. OSBORNE,
EVANS WRIGHT,
CHARLES R. PERRY.

BEN ELI GUTHRIE, Pros. Att'y Macon Co.,
And JAMES CARR, of counsel.

STATE OF MISSOURI, } ss.
COUNTY OF MACON, }

This day personally appeared before the undersigned, clerk of the County Court of Macon County, John H. Osborne, Evans Wright and Chas. R. Perry, who, being by me first duly sworn according to law, depose and say that they have read and heard read the foregoing return, and that the matters and facts as therein stated are true according to the best of their knowledge and belief.

JOHN H. OSBORNE,
EVANS WRIGHT,
CHARLES R. PERRY,

Subscribed and sworn to before me this 14th day of April, A. D. 1880.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name
(SEAL) and affixed the seal of said court.

JAS. G. HOWE,
Clerk Macon County Court.

And afterwards, at said regular stated term of said Circuit Court begun and held as aforesaid, the following further proceedings were had in said case on the 22d day of April, 1880, to wit:

A. HUIDEKOPER, Rel.,
vs.
MACON COUNTY COURT. } 1392.

This day comes the relator by Joseph Shippen, Esq., and files a demurrer to the return of respondents to the alternative writ of mandamus herein.

Which demurrer is in the words and figures following, to wit:

Demurrer to Return.

In the Circuit Court of the United States for the Western District of Missouri, Eastern Division.

U. S. *ex rel.* A HUIDEKOPER,
vs.
MACON COUNTY COURT. } No. 1392.

Relator demurs to the respondents' return to the alternative writ of mandamus herein, and for grounds of demurrer shows that said return does not state facts sufficient to constitute any defence or reason why the command of said writ should not be obeyed, or why the peremptory writ should not be issued.

JOSEPH SHIPPEN,
Relator's Attorney.

And afterwards at said last mentioned term of said Circuit Court, to wit: on the 23d day of April, 1880, the following further proceedings were had in said case, to wit:

A. HUIDEKOPER, Rel.,
vs.
MACON COUNTY COURT. } No. 1392.

This day comes the relator by Joseph Shippen, Esq., his attorney, thereupon the demurrer to the return of respondents to the alternative writ of mandamus is argued by said attorney and submitted, on consideration whereof it is ordered that said demurrer be sustained. On further motion of said attorney it is ordered that a peremptory writ of mandamus be issued returnable on the first Monday of September next directed to the County Court of Macon County and the Justices

thereof, commanding them to order the issue of a warrant to said relator on the general funds of said County, and to cause the same to be forthwith issued for the amount of the judgment in the information described with six per cent. interest per annum and costs.

And afterwards at said last mentioned regular stated term of said Circuit Court begun and held as aforesaid, the following further proceedings were had in said case on July 7, 1880, to wit:

A. HUIDEKOPER, Rel.,
vs.
MACON COUNTY COURT. } No. 1392.

This day there is presented to the Court a writ of error to reverse the judgment in the above cause, a citation directed to the relator, and a supersedeas bond in the sum of one thousand dollars; whereupon said writ of error is allowed, said citation signed, and bond approved and ordered to be made part of the record herein. It is therefore ordered that all further proceedings in the above cause be stayed until the determination of said case in the Supreme Court of the United States.

And the supersedeas bond so filed as aforesaid is in the words and figures following, to wit:

Supersedeas Bond.

Know all Men by These Presents: That we, J. H. Osborne, Evans Wright, C. R. Perry, B. F. Stone, J. O. Jewett, J. J. Long, W. M. Vancle——, J. F. Williams, J. M. London, J. B. Malone, T. G. Sharp, J. Morrow, Sr., are held and firmly bound unto Alfred Huidekoper in the full and just sum of one thousand dollars, to be paid to the said Alfred Huidekoper, his heirs, executors, administrators or assigns, to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators jointly and severally by these presents. Sealed with our seals and dated this —— day of May, in the year of our Lord One Thousand Eight Hundred and Eighty.

WHEREAS, Lately, at the April term, 1880, of the Circuit Court of the United States for the Eastern Division of the Western District of Missouri, in a suit depending in said court, between the United States ex rel Alfred Huidekoper, plaintiff, and Macon County Court and the Justices thereof, defendants, judgment was rendered against the said Macon County Court and the Justices thereof to order the issue of a warrant to the relator on the general funds of Macon County, and to

cause the same to be forthwith issued for the amount of the relator's judgment rendered against said county in said court on the 19th day of November, 1879, for $28,033, and the interest thereon and costs, and said defendants having obtained a writ of error of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Alfred Huidekoper, relator as aforesaid, citing and admonishing him to be and appear at a Supreme Court of the United States, to be holden at Washington the second Monday in October next.

Now, the condition of the above obligation is such that if the said Macon County Court and the Justices thereof shall prosecute said writ of error to effect, and answer all damages and costs if they fail to make good their plea, then the above obligation to be void, else to remain full force and virtue.

Sealed and delivered in presence of

_____
_____
_____

W. M. VANCLEAVE, [Seal.]
JOHN F. WILLIAMS, [Seal.]
JNO. M. LONDON, [Seal.]
J. B. MELONE, [Seal.]
T. G. SHARP, [Seal.]
J. MORROW, SR., [Seal.]
JOHN H. OSBORNE, [Seal.]
EVANS WRIGHT, [Seal.]
CHARLES R. PERRY, [Seal.]
B. F. STONE, [Seal.]
J. O. JEWETT, [Seal.]
J. J. LONG, [Seal.]

Approved by A. KREKEL, Judge.

STATE OF MISSOURI, } ss.
COUNTY OF MACON, }

I, Jas. G. Howe, Clerk of the County Court of Macon County, Missouri, do hereby certify that I am acquainted with the obligors in the above obligation, and that they are solvent and responsible for a much larger amount than the sum named in said bond.

Witness my hand as clerk and the seal of said County Court this eighth day of June, A. D. 1880.

[Seal.] JAS. G. HOWE,
Clerk Macon County Clerk.

And afterwards, at the regular stated term of said Circuit Court, begun and held at the City of Jefferson, in said District, on the third Monday of November, 1883, the following further proceedings were had in said case on the 4th day of March, 1884, to wit:

A. HUIDEKOPER, Relator,
vs.
MACON COUNTY COURT. } No. 1392.

This day comes the relator by his attorney, Joseph Shippen, Esq., and files a mandate from the Supreme Court of the United States in the above entitled case, which is in the words and figures following, to wit:

"UNITED STATES OF AMERICA, *ss.*

THE PRESIDENT OF THE UNITED STATES OF AMERICA.

To the Honorable the Judges of the Circuit Court of the United States
[Seal.] for the Western District of Missouri—Greeting:

WHEREAS, lately in the Circuit Court of the United States for the Western District of Missouri, before you or some of you, in a cause between the United States ex rel., Alfred Huidekoper, plaintiff, and Macon County Court and the Justices thereof, respondents, No. 1392, wherein the judgment of the said Circuit Court, entered in said cause, on the 23d of April, A. D. 1880, is in the following words, viz:

"This day comes the relator by Joseph Shippen, Esq., his attorney; thereupon the demurrer to the return of respondents to the alternative writ of mandamus is argued by said attorney and submitted; on consideration whereof, it is ordered that said demurrer be sustained. On further motion of said attorney, it is ordered that a peremptory writ of mandamus be issued, returnable on the first Monday in September next, directed to the County Court of Macon County, and the Justices thereof commanding them to order the issue of a warrant to said relator on the general funds of said county, and to cause the same to be forthwith issued for the amount of the judgment in the information described, with six per cent. interest per annum and costs," as by the inspection of the transcript of the record of the said Circuit Court, which was brought into the Supreme Court of the United States by virtue of a writ of error agreeably to the act of Congress, in such case made and provided, fully and at large appears, and,

WHEREAS, In the present term of October, in the year of our Lord one thousand eight hundred and eighty three, the said cause came on to be heard before the said Supreme Court, on the said transcript of record, and was argued by counsel: On consideration whereof, it is now here ordered and adjudged by this court, that the judgment of the said Circuit Court, in this cause, be, and the same is hereby,

affirmed with costs; and that the said plaintiff recover against the said respondents, Macon County Court and justices thereof, for his costs herein expended and have execution therefor.

12th NOVEMBER, 1883.

You, therefore, are hereby commanded that such execution and proceedings be had in said cause, as according to right and justice, and the laws of the United States ought to be had, the said writ of error notwithstanding.

Witness the Honorable Morrison R. Waite Chief Justice of said Supreme Court, the eighth day of February, in the year of our Lord one thousand eight hundred and eighty-four. James H. McKenney, Clerk of the Supreme Court of the United States." Now, therefore, in obedience to the commands of the said mandate, it is ordered by the court here, that a peremptory writ of mandamus be issued herein, returnable on the first day of the next term of this court, directed to the county court of Macon county and the Justices thereof, commanding them to order the issue of a warrant to the relator on the general funds of said county, and to cause the same to be forthwith issued for the amount of the judgment in the information described with interest at the rate of six per cent. per annum and costs, and also the costs of this proceeding.

And afterwards on the 5th day of March, 1884, there was issued out of the clerks office of said Circuit Court, a peremptory writ of mandamus, in the words and figures following, to wit:

(Peremptory Writ of Mandamus.)

EASTERN DIVISION OF THE WESTERN DISTRICT OF MISSOURI, *Set.*

The President of the United States of America.

To the County Court of Macon County and the Justices thereof; Greeting:

WHEREAS, It has been represented to our Circuit Court of the United States, in and for the Eastern Division of the Western District of Missouri, that Alfred Huidekoper is a citizen of the State of Pennsylvania, and that (the) County of Macon is a municipal corporation, created and existing under the laws of the State of Missouri, whose business and financial affairs are administered by a County Court, composed of officers of said County, citizens of said State of Missouri; that on the 19th day of November, 1879, said Alfred Huidekoper recovered a judgment against said Macon County for the sum of twenty-eight thousand and thirty-three dollars and costs taxed at one

hundred and seven dollars and twenty cents; that said judgment was based upon coupons for interest detached from bonds issued by said County to the Missouri & Mississippi Railroad Company to aid in the construction of its railroad, pursuant to an act of the General Assembly of the State of Missouri, entitled "An act to incorporate the Missouri & Mississippi Railroad Company, approved February 20, 1865;" that demand has been made upon the said County Court of Macon County, to order the issue of a warrant on the general funds of said County for the amount of the above judgment and cause the same to be issued, which demand was refused, and that said relator is without other adequate remedy a law.

Now, therefore, you, the said County Court of Macon County and the Justices thereof, are hereby commanded to order the issue of a warrant to the relator on the general funds of said County, and to cause the same to be forthwith issued for the amount of the above judgment, with interest at the rate of six per cent. per annum, and costs, and also the costs of this proceeding (as endorsed on this writ), and that you certify due obedience and return this writ on the first day of the next term of this court, (April 21, 1884).

WITNESS, the Honorable Morrison R. Waite, Chief-Justice of the Supreme Court of United States, this 5th day of March, A. D. 1884. Issued at office in the City of [SEAL.] Jefferson, in said District, under the seal of the said Circuit Court, the day and year last aforesaid.

H. C. GEISBERG,
Clerk.

Upon said writ the Marshal for the Western District of Missouri made the following return, to wit:

(Marshal's Return.)

I hereby certify that I executed this writ by delivering a duplicate of the same to James G. Howe, clerk of the County Court of Macon County, in his office as clerk at Macon City, Mo., this 6th day of March, A. D. 1884. All done in the Eastern Division of the Western District of Missouri.

JOS. H. McGEE,
By J. A. STUART, Deputy. U. S. M.

And afterwards, at a regular stated term of said Circuit Court, begun and held as aforesaid, the following further proceedings were had in said case on the 22d day of April, 1884, to wit:

A. HUIDEKOPER, Relator,
vs.
MACON COUNTY COURT. } No. 1392.

This day there is received by mail and filed herein the return of respondents to the peremptory writ of mandamus heretofore issued in this case. Thereupon comes relator by his attorney, Joseph Shippen, Esq., and files motion to quash said return.

And said return so filed as aforesaid is in the words and figures following, to wit:

Respondents' Return.

In the Circuit Court of the United States for the Eastern Division of the Western District of Missouri, April term, A. D. 1884.

ALFRED HUIDEKOPER, } Plaintiff.
vs.
THE COUNTY OF MACON AND STATE OF MISSOURI. } Defendant.

Now comes the County Court of Macon County, Missouri, by its presiding judges thereof, Lee Lingo, Charles R. Perry and Reuben J. Owens, who are duly elected, qualified and acting as such judges and for return to, and in obedience of a certain writ of mandamus issued out of the Circuit Court of the United States for the Eastern Division of the Western District of Missouri, on the 5th day of March, A. D. 1884, commanding said County Court of Macon County, Missouri, to make and order the issue of a warrant to relator, Alfred Huidekoper, on the general funds of said county for the amount of his said judgment, obtained by him on the 19th day of November, 1879, in the U. S. Court for the amount of twenty-eight thousand and thirty-three dollars, with interest thereon from the date of said judgment at the rate of six per cent. per annum, and costs to the amount of one hundred and seven dollars and twenty cents; also the costs of the aforesaid writ of mandamus.

Now, therefore, the County Court of said Macon County, Missouri, by its presiding judge, and under the seal of its said court, hereby certify that on the 19th day of April, A. D. 1884, was made an order causing to be issued to the said Alfred Huidekoper a warrant on the general funds of said County of Macon for the sum of thirty-five thousand six hundred and eleven dollars and forty-seven cents, said warrant being payable out of the general funds of said county, and being the full amount of the aforesaid judgment, interest and costs.

That the said warrant was issued in conformity with the following order of said Macon County Court, a certified copy of which is hereto attached:

"WHEREAS, The United States Circuit Court for the Eastern Division of the Western District of Missouri, on the 5th day of March, A. D. 1884, at the relation of one Alfred Huidekoper, issued and delivered to the court its peremptory writ of mandamus commanding this court to issue to said relator its warrant in payment of a certain judgment in said mandamus described against Macon County and in favor of said relator, with interest and costs. It is hereby ordered that a warrant on the general funds of said county, not otherwise appropriated, be issued in favor of said Alfred Huidekoper for the sum of thirty-five thousand six hundred and eleven and 47-100 dollars, being in full of his said judgment, interest and costs."

All of which is respectfully submitted and respondents ask to be discharged, and that said judgment be ordered satisfied.

LEE LINGO, Presiding Judge.
CHAS. R. PERRY.

JOHN F. MITCHELL,
Prosecuting Attorney.

STATE OF MISSOURI, } ss.
COUNTY OF MACON, }

This day personally appeared before the undersigned, clerk of the County Court of Macon County, Lee Lingo and Charles R. Perry, who, being by me first duly sworn according to law, depose and say that they have read the foregoing return and that the matters and facts as therein stated are true according to the best of their knowledge and belief.

LEE LINGO, President.
CHAS. R. PERRY.

Subscribed and sworn to before me this 19th day of April, 1884.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the seal of said court. (SEAL)

JAS. G. HOWE,
Clerk Macon County Court.

STATE OF MISSOURI, } ss.
COUNTY OF MACON. }

I, Jas. G. Howe, clerk of the county court, within and for the county and State aforesaid, do hereby certify that the following, among other orders, were made at the April term A. D. 1884, of said court, to wit:

Order 5—April 19, 1884.

Whereas, In the United States Circuit Court, for the Eastern Div. of the Western Dist. of Missouri, on the 5th day of March, A. D. 1884, at the relation of one Alfred Huidekoper, issued and delivered to the court its peremptory writ of mandamus, commanding this court to draw to the said relator its warrant in payment of a certain judgment in said mandamus described, against Macon County, and in favor of said relator. It is hereby ordered that a warrant be issued on the general fund of said county, not otherwise appropriated, and be issued in favor of the said Alfred Huidekoper for the sum of thirty-five thousand six hundred and eleven and 47-100 dollars, ($35,611.47), being in full of his said judgment, interest and costs.

IN TESTIMONY WHEREOF, I hereunto set my hand and the seal of said court. Done at office, in Macon, this 19th day of April, 1884.

(SEAL)

JAS. G. HOWE, *County Clerk.*

And the motion to quash the return filed by respondents, so filed as aforesaid, is in words and figures following, to wit:

(Motion to quash return.)

In the Circuit Court of the United States, for the Western District of Missouri, Eastern Division.

UNITED STATES EX REL ALFRED HUIDEKOPER, }
vs. } No. 1392.
MACON COUNTY COURT. }

And now again comes the relator and moves the Court to quash the return of the Macon County Court made herein to the peremptory writ of mandamus filed April 22d, 1884, and for ground of said motion states and shows to the Court that the said writ commanded the respondent to order the issue of a warrant to the relator on the general funds of said County, and to cause the same to be forthwith issued for the amount of the judgment therein stated, with interest at the rate prescribed and costs, whereas, the said return fails to certify obedience to said command.

JOSEPH SHIPPEN, Relator's At't'y.

And afterwards, at said last mentioned term of said Circuit Court, the following further proceedings were had on the 24th day of April, 1884, to wit:

A. HUIDEKOPER, REL.
vs.
MACON CO. COURT. } No. 1392.

This day come the parties by their respective attorneys, the plaintiff by Joseph Shippen, Esq., and the defendant by Messrs. B. E. Guthrie and J. F. Mitchell, thereupon the motion to quash the return heretofore filed was submitted and by the court sustained.

On further motion of relator, it is ordered that respondent make further return herein by the 30th inst., certifying due and perfect obedience to the commands of the peremptory writ heretofore served upon them.

And afterwards, at said term of said Circuit Court, begun and held as aforesaid, the following further proceedings were had in this case on the 30th day of April, 1884, to wit:

A. HUIDEKOPER, rel.
vs.
MACON COUNTY COURT. } No. 1392.

This day there is received and filed herein, the amended return of respondents, certifying obedience to the commands of the peremptory writ of mandamus heretofore issued herein.

Which said amended return is in the words and figures as follows, to wit:

Amended Return.

In the United States Circuit Court, Western District, Eastern Division of Missouri.

ALFRED HUIDEKOPER, Plaintiff,
vs.
MACON COUNTY, STATE OF MISSOURI, Defendant. } Amended return to peremptory mandamus.

Now at this day come Lee Lingo, Presiding Justice, and Charles R. Perry and Reuben J. Owens, Judges of the County Court of Macon County, Missouri, and for a further and amended return to a certain writ of mandamus issued out of the aforesaid United States Circuit

——— on the fifth day of March, A. D. 1884, in favor of said Alfred Huidekoper and against Macon county, Missouri, hereby duly certify; that,

WHEREAS, On the 19th day of April, 1884, this court in obedience to a peremptory writ of mandamus from the United States Circuit Court for the Eastern Division of the Western District of Missouri, tested March 5th, 1884, commanding this court and the Justices thereof, to issue to one Alfred Huidekoper, relator therein, a warrant on the general funds of said county in the treasury thereof, to pay a judgment in favor of said relator and against Macon county, rendered in said Circuit Court on the 19th day of November, 1879, for twenty-eight thousand and thirty-three dollars, with interest and costs; and,

WHEREAS, This court on April 21st, 1884, made return to said Circuit Court of its action in the premises; and,

WHEREAS, Said Circuit Court on the 24th day of April, 1884, quashed said return and held said action of this court in the premises insufficient and ordered further return of obedience to said writ.

It is therefore ordered that said warrant so as aforesaid issued to said Alfred Huidekoper, for thirty-five thousand six hundred and eleven and 47-100 dollars, be and some is hereby cancelled and taken up and the clerk is ordered to cancel and ——— the same. And it is further ordered that the issue to said Alfred Huidekoper a warrant for thirty-five thousand six hundred and seventy-seven and 47-100 dollars, in payment and satisfaction of said judgment, interest and costs up to date of this order and warrant in the following form, to wit:

"The treasurer of the county of Macon, Missouri, will pay to Alfred Huidekoper, thirty-five thousand six hundred and seventy-seven and 47-100 dollars, out of the general funds of said county, in payment of a judgment rendered in the United States Circuit Court vs. Macon county, on coupons of bonds issued to the M. & M. Railroad Company. Given at the court house this 28th day of April, 1884." All which is respectfully submitted.

JOHN F. MITCHELL, *Prosecuting Attorney.*
LEE LINGO, *President of Court.*
R. J. OWENS, *Judge.*
CHAS. R. PERRY, *Judge.*

And afterwards at said term of said Circuit Court the following further proceedings were had in this case on the 5th day of September, 1884, to wit:

A. HUIDEKOPER, Rel.,
vs.
MACON COUNTY COURT. } 1392.

Ordered that this case be continued until the next term of this court.

And afterwards at a regular term stated term of the said Circuit Court, begun and held on the third Monday of November, 1884, the following further proceedings were had in this case on the 17th day of March. 1885, to wit:

A. HUIDEKOPER, Rel.,
vs.
MACON COUNTY COURT. } 1392.

Ordered that this case be continued until the next term of this court.

And afterwards on the 9th day of September, 1885, it being at an adjourned day of the April term, 1885, of the Circuit Court of the United States, in and for the Eastern Division of the Western District of Missouri, the following proceedings were had, to wit:

A. HUIDEKOPER, Rel.,
vs.
MACON COUNTY COURT. } No. 1392.

This day there is received by mail and filed herein relator's information for further writ of mandamus.

And said information, so filed as aforesaid is in words and figures as follows, to wit:

(Information for further mandamus.)

In the Circuit Court of the United States for the Eastern Division of the Western District of Missouri.

UNITED STATES *ex rel.* ALFRED HUIDEKOPER,
vs.
MACON COUNTY COURT. } No. 1392.

To the Honorable Judges of said court of the United States:

Now again comes Alfred Huidekoper and further relates to the court that he is a citizen of the State of Pennsylvania and that the County of Macon is a municipal corporation created by and a citizen of the State of Missouri, whose financial affairs are managed by a County

Court composed of justices who are citizens of said State; that on the 19th day of November, 1879, he recovered in said United States Circuit Court for the Eastern Division of the Western District of Missouri a judgment against the said County of Macon for the sum of twenty-eight thousand and thirty-three dollars ($28,033) with interest and costs, which judgment was based on interest coupons detached from bonds issued by the said county to the Missouri & Mississippi Railroad Company, under the authority of the charter thereof and were issued and dated May 2, 1870, and that thereafter, on the 29th day of April, 1884, pursuant and in obedience to the peremptory mandate of this court in this case, the said County Court, respondent, issued and delivered to your relator a warrant upon the Treasurer of said county in words and figures as follows, to wit:

"The Treasurer of Macon County, Missouri, will pay to Alfred Huidekoper thirty-five thousand six hundred and seventy-seven and 47-100 dollars ($35,677.47) out of the general funds of said county in payment of a judgment rendered in the United States Circuit Court against Macon County, on coupons of bonds issued to the Missouri & Mississippi Railroad Company.

"Given at the court house this 29th day of April, A. D. 1874, by order of court. LEE LINGO,

Attest: President."

JAS. G. HOWE, county clerk."

Which said warrant represented at the date thereof the debt, interest and costs of said judgment; that on the said 29th day of April, 1884, said warrant was duly presented for payment to the Treasurer of said county, who refused to pay the same and certified on the back thereof in words and figures as follows, to wit:

"Presented and not paid for want of funds, this 29th day of April, 1884, at 9:55 P. M., with warrants Nos. 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14.

J. MORROW, Treasurer."

Which said judgment and warrant are still due and owing to your relator and wholly unpaid.

And your relator further relates that the laws of the said State of Missouri, existing at the time of the issue of said bonds and coupons, to wit: May 2, 1870, authorized the County Court of Macon County to levy and collect a tax of one-half of one per cent. upon all the taxable wealth of said county for county revenue in addition to the twentieth of one per cent. tax authorized by the charter of said Railroad Company, and said laws further provided that payment of warrants drawn

upon the funds of said County should be made in the order of the presentation thereof to the County Treasurer, which said laws still remain and exist in full force and effect.

And your relator further relates that said Macon County Court respondent has, for the current year of 1885, ordered to be levied upon every one hundred dollars of valuation of taxable property in said County, as well as upon all merchants and other advalorum duties for county revenue only the sum of thirty cents instead of the fifty cents authorized by law as aforesaid, and has further ordered that said county revenue for the year 1885 be apportioned as follows: To the salary fund one-third, (1-3) of said revenue; to the contingent fund, one-fifth (1-5); to the poor house, one-fifth (1-5); to roads and bridges, one-sixth (1-6); to jury and elections, the balance, and that the clerk certify said order to the Treasurer.

And your relator further relates that a demand has been made on said County Court to pass and enter of record an order annulling and rescinding said order of apportionment and to increase the tax levy for the current year of 1885 from said thirty cents to the fifty cents authorized by law upon every one hundred dollars of valuation of taxable property in Macon County, as well as upon all merchants' licenses and other advalorum duties for county revenue and to apply or cause to be applied the proceeds of said tax to the payment of your relator's said judgment and warrant, and that said demand has been refused.

Wherefore your relator prays the Court to order and issue a further writ of mandamus herein, directed to the said County Court of Macon County and the Justices thereof, commanding them to pass and enter of record an order annulling and rescinding said order apportioning the said County revenue for the year 1885, and further to increase the tax levy for the current year of 1885 from said thirty cents to the fifty cents authorized by law upon every one hundred dollars of valuation of taxable property in Macon County, as well as upon all merchants' licenses and other advalorum duties for county revenue, by a further levy of twenty cents upon every one hundred dollars of said valuation, etc., and further to apply or cause to be applied the proceeds of said county revenue tax of one-half of one per cent. to the payment of your relator's said judgment and warrant with interest and costs, including the costs of this proceeding, and to pay the same according to law.

ALFRED HUIDEKOPER,
By JOSEPH SHIPPEN, his attorney.

STATE OF ILLINOIS, } ss.
COUNTY OF COOK. }

Joseph Shippen being sworn, on oath says that he is attorney for the relator, and the matters and things within alleged are true as he verily believes.

(Signed) JOSEPH SHIPPEN.

Sworn to and subscribed before me, a Notary Public within and for said county, this 8th day of September, 1885, as witness my hand and official seal the day and year aforesaid.

[SEAL]

(Signed) WM. ELLIOT FURNESS,
Notary Public.

And afterwards, at a regular stated term of said Circuit Court, begun and held on the third Monday of November, 1885, in said District and Division, the following proceedings were had in said case on the 18th day of November, in said year, to wit:

ALFRED HUIDEKOPER, rel., }
vs. } No. 1392.
MACON COUNTY COURT. }

This day come the respondents by their attorneys, Messrs. Mitchell & Jones, and file their answer to relator's information for further mandamus filed on September 9, 1885.

And said answer (return) so filed as aforesaid does not appear among the files.

And on said 18th day of November, 1885, it being at said last mentioned regular stated term of said Circuit Court, the following further proceedings were had in said case, to wit:

A. HUIDEKOPER, rel. }
vs. } No. 1392.
MACON CO. COURT et al. }

This day comes the relator by his attorney, Joseph Shippen, Esq., on whose motion this day filed it is ordered that the County Court of Macon County and the Treasurer of said county, respondents herein, respectively make and file in this court on the first Monday of March, 1886, full returns and statements under oath relative to the administration of the county revenue of said county since the first day of January, 1884, to said date of filing said returns, wherein they shall state

what is the aggregate assessed value of the property of said county for said years of 1884 and 1885, what taxes were levied thereon for county revenue and when, what amounts were collected on said levies, what dispositions have been made of the amounts so collected, what sub-divisions into special funds have been made of said county revenue, what payments have been made to each of said funds, and what balances remain in hand to the credit of each of said special funds and to the credit of the general fund, what warrants have been heretofore issued and registered drawn on the general funds, and what if any payments have been made thereon.

And said motion so filed as aforesaid is in the words and figures following, to wit:

(Motion.)

In the Circuit Court of the United States for the Eastern Division of the Western District of Missouri.

A. HUIDEKOPER, Relator,
vs.
MACON COUNTY COURT AND TREASURER. } No. 1392.

And now again comes A. Huidekoper, relator, and showing that he is the holder and owner of a registered warrant on the general funds of Macon County as more fully stated in his information for further writ of mandamus filed herein September 9, 1885, moves the court for an order on the above named respondents, that they respectively make and file in this court on the first Monday of March, 1886, full returns and statements under oath relative to the administration of the county revenue of said county since the 1st day of January, 1884, to said date of filing said returns, wherein they shall state what is the aggregate assessed value of the property of said county for said years of 1884 and 1885, what taxes were levied thereon for county revenue and when, what amounts were collected on said levies, what dispositions have been made of the amounts so collected, what sub-divisions into special funds have been made of said county revenue, what payments have been made to each of said funds, and what balances remain in hand to the credit of each of said special funds and to the credit of the general fund, what warrants have heretofore been issued and registered drawn on the general funds, and what if any payments have been made thereon.

JOSEPH SHIPPEN,
Attorney for Relator.

And afterwards, at said last mentioned regular stated term of said Circuit Court, begun and held as aforesaid, the following further proceedings were had in said case on November 21, 1885, to wit:

A. HUIDEKOPER, Rel.,
vs.
MACON COUNTY COURT. } No. 1392.

This day comes the respondent by its attorney, Jno. F. Mitchell, Esq., and by leave of court files its amended answer herein.

And said amended answer (return) so filed as aforesaid is in the words and figures following, to wit:

Amended Return.

In the Circuit Court of the United States for the Eastern Division of the Western District of Missouri.

UNITED STATES *ex rel.* ALFRED HUIDEKOPER,
vs.
MACON COUNTY COURT.

Now comes Macon County Court and waiving the issuance of an alternative writ of mandamus herein for return and answer to plaintiff's petition filed September 9, 1885, state that it is admitted that Macon County is a municipal corporation whose financial affairs are administered by a County Court, that relator recovered judgment for the amount and at the time and place alleged, and that relator procured a warrant on the treasurer of Macon in the manner and form alleged, and that said warrant is now wholly unpaid. It is further admitted that by the law of the State of Missouri existing at the time of the issue of said bonds, the County Court of Macon County was authorized to levy and collect a tax of one-half on one per cent. upon all the taxable wealth of said county for county revenue in addition to one-twentieth of one per cent. authorized by the charter of said railroad company which laws are now in full force as alleged.

Respondent further answering denies each and *other* allegation in relator's petition contained, except as to relator's demand. Respondent avers that said Macon County is now and has for a long time been duly organized under the general laws of Missouri providing for township organization, and that the affairs of said county are now managed and controlled under and by virtue of the said statute providing for township organization, and the general laws of the State of Missouri; avers that said county court has caused to be levied for the year 1885 upon all

the taxable wealth of said county of whatsoever kind or description the full sum of fifty cents on the one hundred dollars valuation thereof, as will fully appear from exhibits A, B and C hereto attached and made a part of this return, which sum is the greatest amount that said court is permitted to levy for any one year by the Constitution and the laws of the State of Missouri, that said tax is levied and divided as follows, to wit: For county revenue, the sum of thirty cents on the one hundred dollars valuation, which is sub-divided as alleged in relator's petition; for township and road tax, the sum of twenty cents on the one hundred dollars valuation. Wherefore respondent says it has levied the full amount of tax authorized by law for the year 1885, and having fully answered respondent asks to be discharged.

JOHN F. MITCHELL,
JOHN T. JONES,
Attorneys for Respondent.

John F. Mitchell, Prosecuting Attorney within and for the County of Macon, in the State of Missouri, being duly sworn on his oath states that the matters and facts contained in the foregoing return and answer are true to the best of his knowledge and belief.

JOHN F. MITCHELL,
Prosecuting Attorney, Macon County.

Subscribed and sworn to before me this 21st day of November, 1885.

H. C. GEISBERG,
Clerk.

Exhibit A.

STATE OF MISSOURI, }
COUNTY OF MACON, } ss. May Term, 1885.

In the County Court of said county, on the 6th day of May, 1885, the following, among other proceedings were had, viz:

(Order No. 5.)

It is hereby ordered by the court, that the levy for State, county, M. & M. Railroad and Omaha purposes, for taxes of year 1885, to be levied upon every $100 valuation of taxable property in Macon county as well as upon all merchants and other advalorum duties shall be made as follows:

For State Interest Fund	20	cents.
For State Revenue Fund	20	"
For County Fund	30	"
For M. & M. R. R. Fund	5	"
For Omaha, (Hudson Twp)	20	"
For Omaha, (Liberty Twp.)	60	"

And the clerk of this court is hereby directed to extend the taxes of said year, upon the taxable property of said county, at the foregoing rates.

STATE OF MISSOURI, } ss.
COUNTY OF MACON, }

I, James G. Howe, Clerk of the County Court, in and for said county, hereby certify the above and foregoing to be a true copy of the proceedings of our said County Court, on the day and year above written, as the same appears of record in my office.

IN TESTIMONY WHEREOF, I have hereunto set my hand, and affixed [SEAL.] the seal of said court, at office in Macon this the 20th day of October, 1880.

JAS. G. HOWE,
Clerk County Court.

By CHAS G. HOWE, *D. C.*

Exhibit B.

STATE OF MISSOURI, } ss.
COUNTY OF MACON, } June Term, 1885.

In the County Court of said county, on the 4th day of June, 1885, the following among other proceedings, were had, viz:

(Order No. 13.)

WHEREAS, It appears to the satisfaction of this court from the certified returns filed with the clerk of this court, by the several Township Boards of the several twps. of Macon County, that said Twp. Boards have made the following levies for township purposes and road purposes for the year 1885, to wit:

Township.	For twp. levy.		For road. levy.		Township.	For twp. levy.		For road. levy.	
Middle Fork	15	Cents.	5	Cents.	Liberty	15	Cents.	5	Cents.
Round Grove	15	"	5	"	Independence	15	"	5	"
Ten Mile	15	"	5	"	Richland	15	"	5	"
Jackson	15	"	5	"	Morrow	15	"	5	"
Johnson	10	"	10	"	Callao	15	"	5	"
Narrows	15	"	5	"	Valley	15	"	5	"
Hudson	10	"	10	"	Walnut Creek	15	"	5	"
Eagle	15	"	5	"	Easley	15	"	5	"
Lyda	10	"	10	"	Lingo	15	"	5	"
La Plata	10	"	10	"	Russell	15	"	5	"
Charitou	15	"	5	"	White	15	"	5	"
Bevier	15	"	5	"	Drake	15	"	5	"

It is therefore ordered by the Court that the Clerk of this Court be and he is hereby directed to extend on the several tax books of the respective Twps. the aforesaid rates for Twp. purposes, as well as upon all merchants and other advalorums. And it is further ordered that the several Twp. clerks be and they are hereby directed to extend upon the road tax books of their respective townships the aforesaid rates for road purposes.

STATE OF MISSOURI, } ss.
COUNTY OF MACON. }

I, James G. Howe, Clerk of the County Court, in and for said County, hereby certify the above and foregoing to be a true copy of the proceedings of our said County Court, on the day and year above written, as the same appears of record in my office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, at office, in Macon this the 20th day of October, 1885.

(SEAL)

JAS. G. HOWE, Clerk County Court.

By CHAS. G. HOWE, D. C.

Exhibit C.

STATE OF MISSOURI, }
COUNTY OF MACON, } ss. May and June Term, 1885.

In the County Court of said County, on the 6th day of May, 1885, the following, among other proceedings, were had, viz:

(Order No. 4.)

It is hereby ordered by the court that the county revenue, levied and collected for the year 1885, be and the same is hereby apportioned and sub-divided, as contemplated under and by virtue of section 6819 of the Revised Statutes of Missouri at page 1339, as follows:

To the Salary Fund, 1-3 of said Revenue.
To the Contingent Fund, 1-5 of said Revenue.
To the Poor House Fund, 1-5 of said Revenue.
To the Road and Bridge Fund, 1-6 of said Revenue.
To the Jury and Election Fund, balance of said Revenue.
And that the (*he*) certify this order to the Treasurer.

(Order No. 14—made June 4, 1885.)

Now comes Alfred Huidekoper, by his Atty., and presents his petition praying the court to make an additional levy of 20 cents on the $100 valuation of taxable property in Macon County and to rescind the order of this court apportioning the county revenue to the several funds.

Ordered by the court that the prayer of said petition be refused.

STATE OF MISSOURI, }
COUNTY OF MACON. } ss.

I, Jas. G. Howe, Clerk of the County Court in and for said county, hereby certify the above and foregoing to be a true copy of the proceedings of our said County Court, on the day and year above written, as the same appears of record in my office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said court, at office in Macon, this the 20th day of October, 1885.

(SEAL)

JAS. G. HOWE, Clerk County Court.
By CHAS. G. HOWE, D. C.

And afterwards at said laid last mentioned regular stated term of said Circuit Court, begun and held as aforesaid, the following further proceedings were had in said case on November, 25, 1885, to wit:

ALFRED HUIDEKOPER, rel.,
vs.
MACON COUNTY. } No. 1392.

This day come the respondents by their attorneys, Messrs. Mitchell & Jones, and submit this cause on the amended answer to the information for further mandamus filed September 9th, 1885, on their part, after argument. And also comes the relator and submits the same on briefs this day filed, which is by the court taken under advisement.

And afterwards, on the 28th day of November, 1885, it being in vacation of said Circuit Court, the following proceedings were had in said cause, to wit:

A. HUIDEKOPER,
vs.
MACON COUNTY COURT. } No. 1392.

The clerk of this court is directed to ascertain the number and amount of the judgments against Macon County on bonds issued to the Missouri & Mississippi Railroad Company, and apply to the attorneys in the cases for their consent to the appointment of a Special Master to examine into and report upon the financial condition of said county, and management of the county funds of said county for the purpose of establishing some rule for the payment of the warrants drawn on the general and special funds in the treasury of said county.

And afterwards, on the 24th day of February, 1886, it being in vacation of said Circuit Court., the following further proceedings were had in said case, to wit:

A. HUIDEKOPER, Rel.,
vs.
MACON COUNTY COURT. } 1392.

This day there is received and filed herein a statement of the receipts and expenditures of Macon County, Mo., for the two years ending December 31, 1885.

And said statement, so filed as aforesaid, is in the words and figures following, to wit:

(Statement of receipts and expenditures.)

FINANCIAL STATEMENT

Of the receipts and expenditures of the County Revenue of Macon County, Mo., for fiscal year ending December 31, 1884:

CONTINGENT FUND.

Receipts.	
On hand Jan. 1, 1884	$1,703.34
Received from taxes	3,128.73
" " licenses	934.27
" " advaloremo	165.29
" " R. S. Matthews	5.75
" " P. Trammel	30.00
" " W. H. Terrell	35.53
Total	$6,002.91
Expenditures.	
Books and stationery	$611.91
Costs in state cases	515.11
Printing and advertising	54.85
Board of prisoners	167.50
Repairs on C. H. and jail	107.50
Fuel	100.38
Inquest fee bills	237.75
Postage and express	18.85
Abstracting Co. lands	5.00
Sheriffs' fees	400.35
Circuit clerks' fees	90.75
Expense of insane	40.66
Wolf scalps	3.00
Assessing	768.67
M. & M. bond suits	771.50
Miscellaneous	123.82
Balance on hand Jan. 1, 1885	1,985.31
Total	$6,002.91

POOR HOUSE FUND.

Receipts.	
On hand Jan. 1, 1884	103.33
Received from taxes	3,504.18
" " licenses	934.27
" " advalorums	165.29
Total	$4,707.07
Expenditures.	
Expense of county poor house	$877.92
" of poor, not in house	531.50
" of insane at asylum	1,515.31
" of coffins for poor	25.00
Inquest fee bills	14.00
Insurance on poor house	12.00
Balance on hand Jan. 1, 1885	1,731.34
Total	$4,707.07

SALARY FUND.

Receipts.	
Received from taxes	$5,677 27
" " licenses	1,557 12
" " advalorems	275 48
Total	$7,509 87
Expenditures.	
Amount overpaid Jan. 1, 1884	$165 36
Expense of county clerk's office	2,708 34
Sheriff's fees	114 00
County treasurer's salary	1,286 31
Prosecuting attorney's salary	800 00
Assessing	123 10
Mine inspector's salary	150 00
Board of equalization	82 35
County surveyor's salary	28 50

School commissioner's salary	$40 00
County judges' salary	528 79
Balance on hand Jan. 1, 1885	1,483 12
Total	$7,509 87

JURY AND ELECTION FUND.

Receipts.	
On hand Jan. 1, 1884	$1,220 45
Received from taxes	2,654 99
" " licenses	778 56
" " advalorems	137 74
" " jury fees	62 00
Total	$4,853 74
Expenditures.	
Costs of jurors and witnesses	$1,844 30
" judges and clerks of elections	49 50
Balance on hand Jan 1, 1885	2,959 94
Total	$4,853 74

ROAD AND BRIDGE FUND.

Receipts.	
On hand Jan. 1, 1884	$356 66
Received from taxes	1,577 84
" " licenses	466 15
" " advalorems	82 70
Total	$2,483 35
Expenditures.	
County surveyor's salary	$38 36
Erection of bridges	815 26
Balance on hand Jan. 1, 1885	1,629 73
Total	$2,483 35

FOR 1884.

Assessed valuation of Macon county for year 1884	$5,646,987 00
Levy by county court, at 30 cts	16,941 39
Levy by township boards, at 20 cts	11,293 97

Levy made by county court May 5, 1884.
Levy made by township boards April, 1884.

RECAPITULATION FOR 1884.

Receipts.	
On hand Jan. 1, 1884	$3,218 42
Received from taxes	16,110 60
" " licenses	4,672 37
" " advalorems	826 44
" " Wabash R. R.	548 48
" " Telegraph Co	15 07
Total	$25,391 58
By treasurer's vouchers on settlement	15,602 14
Balance on hand Jan. 1, 1885	$9,789 44

FINANCIAL STATEMENT.

Of the receipts and expenditures of the county fund of Macon county for fiscal year ending December 31, 1885.

CONTINGENT FUND.

Receipts.	
Cash on hand Jan. 1, 1885	$1,985 31
Collected from taxes	3,402 51
" " license	1,030 19
" " advalorem	122 52
" " J. L. Martin	39 85
" " W. H. Terrell	29 80
Total	$6,610 18

Expenditures.	
Books and stationery	$ 867.53
Costs in State cases	573.94
Sheriff's fees	658.20
Assessing	489.72
Repairs	286.80
Lumber	134.46
Fuel	227.34
Costs in M. & M. suits	165.00
Copying U. S Field notes	100.00
Board of prisoners	79.75
Advertising	82.53
Mine instruments	80.00
Inquest fee bills	82.90
Postage and express	78.46
Circuit clerk's fees	60.60
Mdse. County jail	44.20
County vs. First National Bank	11.50
Wolf scalps	24.00
Miscellaneous	25.78
Balance on hand January 1, 1886	2,537.47
Total	$6,610.18

SALARY FUND.

Receipts.	
Cash on hand January 1, 1885	$1,483.12
Collected from taxes	5,670.59
Collected from license	1,716.98
Collected from advalorem	204.19
Collected from J. L. Martin	15.00
Collected from W. H. Terrell	15.30
J. G. Howe, Clerk's fees returned	2,845.93
Total	$11,951.11

Expenditures.	
County school commissioner's salary	$45.20
Expense of clerk's office	6,845.25
Treasurer's salary	1,747.69
Sheriff's fees	162.00
Prosecuting Attorney salary	640.00
Mine Inspector's salary	137.50
Board of equalization	63.00
County surveyor's salary	30.00
County judge's salary	452.65
Costs in M. & M. suits	50.00
Interest paid	107.75
Balance on hand January 1, 1886	1,670.07
Total	$11,951.11

POOR HOUSE FUND.

Receipts.	
Cash on hand January 1,	$1,731.34
Collected from taxes	3,402.51
" " license	1,030.19
" " advalorem	122.52
" " J. L. Martin	10.00
" " W. H. Terrell	20.00
Total	$6,316.56
Expenditures.	
Expense of poor house	$1,170.24
Expense of poor, not in poor house	805.37
Expense of insane	799.00
Expense of coffins	38.60
Expense of inquests	4.00
Expense of fuel	7.70
Balance on hand January 1, 1886	3,491.65
Total	$6,316.56

ROAD AND BRIDGE FUND.

Receipts.	
Cash on hand January 1	$1,629.73
Collected from taxes	1,685 08
Collected for license	858.48
Collected from advalorem	102.09
Collected from J. G. Howe	24.45
Total	$4,299.84
Expenditures.	
County surveyor's salary	$179.21
Erection of bridges	1,672.95
Road jurors	3.00
Balance on hand January 1, 1886	2,444.68
Total	$4,299.84

JURY AND ELECTION FUND.

Receipts.	
Cash on hand	$2,959.94
Collected from taxes	2,832.79
Collected from license	515.10
" " advalorem	81.69
" " jury fees	73.15
" " W. H. Terrell	9.90
" " J. L. Martin	6.00
Total	$6,478.57
Expenditures.	
Expense of jurors and witnesses	$1,858.60
" " elections	369.40
Balance on hand January 1, 1886	4,250.57
Total	$6,478.57

FOR 1885.

Assessed valuation of Macon county for the year	$5,560,563 00
Levy by county court at 30c	16,681 68
Levy by township boards, at 20c	11,121 12

Levy made by county court, May 6, 1885.
Levy made by township boards, April 1885.

RECAPITULATION FOR 1885.

Receipts.	
On hand January 1, 1885	$9,789 44
Received from taxes 1885 and prior	16,708 70
" " licenses	5,150 95
" " advalorem	612 58
" " W., St. L. & P. R. R. Co	532 45
" " W. U. Telegraph Co	16 21
" " county clerk, excess of salary	2,845 93
Total	$35,656 26
By treasurer's vouchers on settlement	21,261 82
Balance on hand January 1, 1886	$14,394 44

The reason why the statement made ends January 1, 1886, and not to date of filing, is that the County Treasurer makes semi-annual settlements, to wit: on the 1st of January and 1st of July each year, and would be very difficult to make a correct statement for January and part of Febuary owing to this fact. And as it would require a longer time to make a statement for this short period, than it did to make entire statement rendered, and when made would not materially change the general result, is our apology for rendering statement to January 1. For the court by

[SEAL] JAS. G. HOWE,
County Clerk.

FINANCIAL STATEMENT

Of the receipts and expenditures of the "Missouri & Mississippi Railroad Fund" of Macon County, Missouri, for fiscal year ending January 1, 1886.

Receipts.	
On hand January 1, 1885	$808 83
Received from taxes, 1885	2,686 21
" " Wabash R. R	88 74
" " Telegraph Co	2 70
" " advalorem tax	101 37
Total	$3,687 85
Expenditures.	
Paid coupon No. 23 off bond 140 of $1,000 and interest on same	$47 70
Paid coupon No. 27 off bond 140 of $1,000 and interest on same	42 85
Union National Bank on Wt. No. 1 of 1879	1,291 50
Union National Bank on Wt. No. 4 of 1879	541 50
J. Winters on Wt. No. 3 of 1879	204 75
Byron Griffith on Wt. No. 2 of 1879	535 50
W. W. Watkins on Wt. No. 4 of 1878	576 45
Balance on hand Jannary 1, 1886	447 30
Total	$3,687 85

STATEMENT

Of sub-division of County Revenue for years 1884 and 1885, to wit:

For 1884.	
To salary fund	1-3 of said revenue.
contingent fund	1-5 " "
poor house fund	1-5 " "
jury and election fund	1-6 " "
road and bridge fund	Bal. " "

For 1885.	
To salary fund	1-3 of said revenue.
contingent fund	1-5 " "
poor house fund	1-5 " "
road and bridges fund	1-6 " "
jury and elections fund	Bal. " "

STATEMENT

Of warrants issued on the general fund of Macon County to January 1, 1886.

When issued.	To whom.	No.	Amount.
April 29, 1884.	Huidekoper, Alfred	2	$35,677 47
	Daniels, John H	3	14,897 58
	Smith, Wm. P	4	23,633 85
	Shores, Jas. F	5	15,786 86
	Meade, Alex. H	6	12,520 39
	Thrasher, Isaac	7	23,549 64
	White, Thos. W	8	3,914 26
	Hicks, Geo. F	9	3,868 86
	Jocelyn, Chas. W	10	3,190 70
	Smith, Mary I	11	8,351 58
	Same	12	4,687 88
	Day, Robt. E	13	22,096 16
	Andrew J. H	14	3,935 18
	State of Missouri	15	7,848 99
	Crandall, O. A	16	20 00
	Day, Robt E	17	113 35
	Total		$184,272 75

And upon which no payments have been made.

STATE OF MISSOURI, } ss.
COUNTY OF MACON. }

Personally appeared before me a clerk of the Macon Circuit Court, being a court of record, within and for said county and State, Lee Lingo, Presiding Justice of the county court of Macon county, Missouri, and R. J. Owens and S. F. Blackwell, Associate Justices of said court, and Phillip Trammel, Treasurer of said county, who, being by me duly sworn, depose and say that the within and foregoing statement, hereto attached, relative to the administration of the county revenue of Macon county from the 1st day of January, A. D. 1884, to the 31st day of December, A. D. 1885, is true and correct, and full and complete, as the same appears of record in the offices of the county clerk and of the county Treasurer of said Macon county.

LEE LINGO, Presiding Justice. [Seal.]
R. J. OWENS, Associate Justice. [Seal.]
S. F. BLACKWELL, Associate Justice. [Seal.]
P. TRAMMEL, County Treasurer. [Seal.]

Subscribed and sworn to before me this 23d day of February, A. D. 1886.

(SEAL) J. L. MARTIN,
Clerk Macon Circuit Court.

And afterwards at said last mentioned regular stated term of said circuit court, begun and held as aforesaid, the following further proceedings were had in said case on the 3d day of March, 1886, viz:

ALFRED HUIDEKOPER, Rel., } No. 1392.
vs.
MACON COUNTY COURT. }

This day comes the relator and files a motion for an order directing and requiring the treasurer of Macon county, Mo., to forthwith pay the relator the balance of cash in the treasury of said county, and apply the same upon his general warrant No. 2, and to certify his obedience to said order under oath, and submits the same on his part.

And said motion, so filed as aforesaid, is in the words and figures following, to wit:

(Motion.)

In the U. S. Circuit Court, for the Eastern Divn. of Westn. Dist. of Missouri.

UNITED STATES EX REL., ALFRED HUIDEKOPER, Plaintiff,
vs.
MACON COUNTY COURT JUSTICES AND TREASURER. } No. 1392.

And now again comes the relator herein and further shows that the warrant issued to him by the Macon county court for $35,677.47, payable out of the general funds of said county, and registered April 29, 1884, remains wholly due and unpaid; that by the financial report filed herein by the respondents February 24, 1886, there was a balance of cash in the hands of the treasurer on the 1st day of January, 1886, of $14,394.44, and said balance now at the time of making this motion is about the sum aforesaid; that the relator has made demand upon said treasurer for the payment of said balance to apply as part payment on his said warrant, which has been refused.

And the relator states that upon his obtaining his original judgment November 19, 1879, in this court for $28,033, he instituted proceedings in mandamus against the respondent for a warrant payable out of the general fund of said county and obtained an order for such peremptory writ, whereupon the respondent sued out a writ of error thereon to the Supreme Court of the United States, which court affirmed the said order of this court, and thereafter, in obedience and pursuant to the peremptory writ of mandamus of this court, the respondent issued said warrant to the relator and the same was duly presented to and registered by the treasurer of Macon county April 29, 1884. And the relator states and insists that, although other warrants of like character and effect were issued and registered by the respondent the same day last mentioned upon which the relators said warrant was issued and registered, yet the said warrant of the relator is entitled to precedence in payment over such others by reason of its having been issued as the result of the aforesaid legal proceedings whereby he acquired the same, and further by reason of its being prior in number and standing first on the record of the unpaid registered warrants payable out of said general funds of Macon county.

And thereupon the relator moves the court for an order directing and requiring the Treasurer of Macon county to forthwith pay the relator the balance of cash aforesaid in the treasury, to apply upon his

said general warrant number 2, and that said Treasurer certify and return under oath his obedience to this order to this court on or before the —— day of ————, 1886.

JOSEPH SHIPPEN,
Attorney for Relator.

An afterwards at said last mentioned regular stated term of said circuit court, begun and held as aforesaid, the following further proceedings were had in said case on the 17th day of March, A. D. 1886, to wit:

ALFRED HUIDEKOPER, Rel.,
vs.
MACON COUNTY COURT, *et al.* } No. 1392.

This day come the respondents by their attorney, John T. Jones, Esq., and file their answer to relator's motion for further mandamus herein, and the same being submitted, is by the court taken under advisement.

And said answer so filed as aforesaid is in the words and figures following, to wit:

(Answer.)

In the U. S. Circuit Court for the Eastern Division of the Western District of Missouri.

UNITED STATES *ex rel.* ALFRED HUIDEKOPER,
vs.
MACON COUNTY COURT, JUSTICES AND TREASURER. } No. 1392.

Now again come respondents in the above entitled cause and for answer to relator's motion for further order filed 3d day of March, 1886, and admits that a warrant was issued to relator for the amount and in the manner alleged; admits that by the financial report filed herein by respondents there was in the hands of the treasurer on the 1st day of January, 1886, the sum of $14,394.44, and that said sum is now in the hands of said treasurer.

Respondents further answering say that the sum now in the hands of said treasurer as aforesaid is the total amount paid into the said treasury since relator's warrant was issued and registered; that for the years 1883, 1884 and 1885 caused to be assessed and levied on all the taxable property of whatsoever kind and description the full sum of one-half of one per cent. for county purposes, and one-twentieth of one per cent. for M. & M. Railroad purposes, which said sums are all re-

spondents are authorized by law to levy; that the whole of said tax levied for county purposes has not been and is not sufficient to pay the current and ordinary expenses of said county for said years, and that no part of the same now on hand can be by law applied to the payment of plaintiff's warrant; that there are now outstanding and unpaid warrants far in excess of the sum on hand issued in payment of the ordinary current expenses of said county for the years 1883, 1884 and 1885. Respondents further answering say that prior to the issuing of relator's warrant and the registration of the same, respondents, the county court, caused to be issued to the Macon county school fund a warrant for the sum of $7,848 99 which said warrant was registered for payment prior to and before relator's said warrant; that said school fund warrant was issued to pay a valid and outstanding indebtedness of said county to said school fund; that said warrant still remains registered as aforesaid and is wholly unpaid; and having answered, respondents pray that the relief sought may be denied with such further orders as may to the court seem just and proper.

JOHN F. MITCHELL,
Prosecuting Attorney,
And JOHN T. JONES,
Attorney for Respondents.

And afterwards at the regular stated term of said circuit court, begun and held on the third Monday of April, 1886, at the place aforesaid, the following further proceedings were had in said case on the 22d day of September, 1886, to wit:

A. HUIDEKOPER, Rel.,
vs.
MACON COUNTY COURT. } 1392.

Ordered that this case be now continued until the next term of this court.

~~And afterwards at a regular stated term of said circuit court, begun~~ and held on the third Monday of November, 1886, at the place aforesaid, the following ~~further~~ proceedings were had in said case on ~~the 24th day of March, 1887,~~ to wit:

And afterwards, on the 25th day of October, 1886, the following additional return to return filed March 17, 1886, was filed in said case, to wit:

Amended Return.

In the Circuit Court of the United States for the Eastern Division of the Western District of Missouri.

UNITED STATES *ex rel.* ALFRED HUIDEKOPER,
vs.
MACON COUNTY COURT, JUSTICES AND TREASURER. } Additional return.

Now come the respondents and ask leave of court to file the following additional and supplemental return to their former return, filed March 17, 1886, to the relators motion for a further order filed March 3, 1886, to wit: That on the 18th day of April, 1884, the respondents herein were duly served with alternative writs of mandamus issued out of this court at the relation of Jas. F. Shores, Alex. H. Meade, Isaac Thrasher, Thos. W. White and Geo. F. Hicks, commanding the county justices and the county court of Macon county to issue to the said relators therein several warrants on the county treasurer of said county, payable out of the general funds of said county and commanding the county treasurer to register and pay said warrants out of said funds then in his hands and thereafter coming into his hands in the order of their registration. That on the 29th day of April, 1884, said county court issued said warrants to said relators, to wit:

To Jas. F. Shores, for	$15,786.86
To Alex. H. Meade, for	12,520.39
To Isaac Thrasher, "	23,549.64
To Thos. W. White, "	3,914.26
To Geo. F. Hicks "	3,868.86

And said warrants were on said 29th day of April, 1884, along with the said warrant of relator presented to the treasurer of Macon county and were by him duly registered at 9:55 p. m., and payment refused for the want of funds to pay the same and on the —— day of May, 1884, said treasurer made return to this court of his proceedings under said writs and showing therein divers and sundry reasons why he should not be compelled to pay said warrants as in said several writs of mandamus he was ordered. That afterwards, to wit, on the —— day of ———,

1884, said relators appeared in this court and filed their several motions to quash said return of said treasurer and order him to pay said warrants. That said matters thus brought in issue were argued and submitted to this court and by it then in December, 1884, taken under advisement and are now and ever since have been pending in this court and is still undecided.

In addition to the aforesaid warrants, there were on same day, to wit, 29th day of April, 1884, at the same hour presented to said treasurer and by him duly registered the following warrants of like character with relators to the following persons, to wit:

John H. Daniels, for	$14,897.58
Wm. P. Smith, "	23,633.85
Charles W. Jocelyn, "	3,190.70
Mary I. Smith, "	8,531.58
Mary I. Smith, "	4,687.88
Robt. E. Day	22,096.16
J. H. Andrews	3,935.18
O. A. Crandall	20.00
Robt. E. Day	113.35

The said last mentioned warrants were also issued on judgments and mandamus proceedings of this court and all remain wholly unpaid for want of funds to pay the same.

JOHN F. MITCHELL,
Pros. Att'y Macon Co.

And afterwards at a regular stated term of said circuit court, begun and held as aforesaid on the third Monday of November, 1886, the following further proceedings were had in said case on the 24th day of March, 1887, to wit:

A. HUIDEKOPER, Rel.,
vs.
MACON COUNTY COURT. } No. 1392.

Ordered that this case be continued until the next term of this court.

And afterwards at a regular stated term of said circuit court be-

gun and held at the place aforesaid, the following further proceedings were had in said case on the 23d day of April, 1887, to wit:

This day the following order was filed and ordered to be entered of record, viz:

In the Circuit Court of the United States for the Western District of Missouri, Central Division.

UNITED STATES *ex rel.* ALFRED HUIDEKOPER,
vs.
MACON COUNTY COURT, AND THE JUSTICES THEREOF AND THE TREASURER OF SAID COUNTY, Respondents.
No. 1392.
April Term, 1887.

April 23, 1887.

The court having seen and heard the matters and things herein submitted on the pleadings and allegations of the parties and the returns and exhibits of the respondents, and the special finding of facts submitted by the parties and hereby accepted and made the special finding of facts of the court, and ordered to be entered of record herein as such. The court finds the issues for the relator and that there are other warrants in favor of other claimants, some of whom are relators in other mandamus proceedings pending in this court issued against said general funds of Macon county, and of even date and registration with relator's warrant, which with relator's warrant amount to one hundred and seventy-six thousand two hundred and ninety dollars and forty cents ($176,290.40), and it thereupon ordered, considered and adjudged that a peremptory writ of mandamus issue forthwith directed to the respondents, commanding them to pass and enter of record an order annulling and rescinding said order in relator's information mentioned apportioning the said county revenue for the year 1885 into separate and distinct funds, and further commanding them, the said respondents, to increase the tax levy for the year 1885 from thirty cents to fifty cents by a further levy of twenty cents on the hundred dollars for the said year 1885 upon every hundred dollars of valuation of taxable property in Macon county as well as upon all merchants licenses and other advalorem duties for county revenue, said last mentioned levy to be made forthwith and collected together with the regular annual levies required by law to be made in the present year of 1887, and further to apply the proceeds of such levy pro rata when and as the same is collected upon and towards the payment of all the said registered warrants of even date and registration with relator's, and issued under and by virtue of mandamus proceedings in this court.

And it is further ordered, considered and adjudged by the court that said peremptory writ further command the respondents to pay or cause to be paid pro rata upon the relator's warrant, and the registered warrants of even date and registration therewith, issued under and by virtue of mandamus proceedings in this court, the rest and residue of fourteen thousand four hundred and ninety-three dollars and forty-four cents ($14,493.44) together with any other and further funds accumulated in the county treasury of said Macon county since the 1st day of January, 1886, after paying and discharging with interest the warrant No. 15 in favor of the school fund for seven thousand eight hundred and forty-eight dollars and ninety-nine cents ($7,848.99) of prior registration to the warrant of relator, and said other warrants of even date and registration with relator's.

And it is further ordered that the officers and each of them now holding and exercising the respective offices of the respondents be and are hereby required to return and certify under their respective corporal oaths their obedience to the above stated commands at the adjourned session of this court to be held on the first Monday of September, 1887.

(Signed.) A. KREKEL, Judge.

And the special finding of facts so filed as aforesaid is in the words and figures following, to wit:

(Special finding of facts.)

In the Circuit Court of the United States for the Eastern Division of the Western District of Missouri.

UNITED STATES *ex rel.* ALFRED HUIDEKOPER,
vs.
MACON COUNTY COURT. } No. 1392.

And now again this case came on to be heard upon the relator's information for further writ of mandamus, filed September 9, 1885, and the respondents' answer thereto waiving the issue of an alternative writ and the relator's motion to quash said answer, and upon the evidence offered the court doth make and order to be entered of record the following special finding of facts:

1. That the relator recovered a judgment against Macon county and obtained a warrant therefor and made the demand which was refused as in and by said information is fully set forth, and said judgment and warrant are wholly unpaid.

2. That the respondent made and entered of record the orders of which copies are appended to its said answer as Exhibits A, B and C, and the same constitute the entire and only tax levy by it made in the year 1885.

3. That the relators said judgment was based on interest coupons detached from bonds of said Macon county, dated and issued May 2, 1870, under authority conferred by an act of the General Assembly of the State of Missouri, entitled "An act to incorporate the Missouri & Mississippi Railroad Company." Approved February 20, 1865. And said bonds were a part of an issue amounting to $175,000, issued May 2, 1870, and there was also a prior issue of bonds by said county amounting to $175,000 issued May, 1867, under the said statute.

4. That the county court of Macon county has had conferred upon it power and authority to levy taxes irrespective of the special tax named in the 13th section of said "act to incorporate the Missouri & Mississippi Railroad Company" by the following statutes of the General Assembly of the State of Missouri:

A. "General statutes of Missouri 1865, page 121, chapter 13, section 76.

"The several county courts are empowered to levy such sums as may be necessary to defray the expenses of their respective counties by a tax upon all the property and licenses made taxable by law for State purposes; but the county tax shall, in no case, exceed the State tax on the same subject of taxation more than one hundred per centum for the same time."

B. "General Statutes 1865, page 53. An ordinance for the payment of State and railroad indebtedness, approved April 8, 1885, section 6.

"The General Assembly shall provide by law for the payment of all State indebtedness not hereinbefore provided for, and for this purpose a tax of one-quarter of one per centum on all real estate and other property and effects subject to taxation shall be assessed and collected. * * * * * *

C. General Statutes 1865, page 95, title V, of the assessment and collection of the revenue, chapter II.

SECTION 1. "For the support of the government of the State, the payment of public debt, and the advancement of the public interest, taxes shall be levied on the following persons and objects: All male persons over the age of twenty-one and under fifty years of age, and on all property, real and personal, except as stated in the next section."

SEC. 7. The annual tax upon all subjects of taxation, exclusive of taxes for the union military fund, shall be at the following rates: First, on all male persons over twenty-one and under fifty years, one dollar; second, on lands and other property, real and personal, made taxable by law forty cents on the hundred dollars of the assessed value thereof."

D. Laws 1867, p. 168.

SEC. 1. "That in pursuance to the requirements of the sixth section of the ordinance of the convention adopted April 8, 1865, there is hereby levied and shall be assessed and collected for the years 1867 and 1868 a tax of four-tenths of one per cent. of the assessed value of all the real and other property subject to taxation in this State" * * * * * *

Approved March 12, 1867.

E. Laws of 1867, p. 157.

SEC. 1. "That the annual taxation for the years 1867 and 1868 for the purpose of revenue shall be at the following rates: First, on all male white persons over twenty-one and under fifty-five years of age, fifty cents; second, on all lands and other property, real and personal, made taxable by law twenty-five cents on the one hundred dollars of the assessed value thereof."

Approved March 12, 1867.

F. Laws of 1868, p. 174.

SEC. 1. That section 1 of an act entitled an act to provide for the payment of the interest upon the State debt, approved March 12, 1867, be and the same is hereby amended to read as follows: Section 1. That in pursuance of the requirements of the sixth section of the ordinance of the convention adopted April 8, 1865, there is hereby levied and shall be assessed and collected for the year 1868 a tax of one-fourth of one per cent. on the assessed value of all the real and other property subject to taxation in this State. * * * * * *

G. Laws of 1868, p. 142.

SEC. 2. "That section seventy-six of chapter thirteen, general statutes, be amended to read as follows: The several county courts are empowered to levy such sums as may be annually necessary to defray the expenses of their respective counties by a tax upon all property and

licenses made taxable by law for State purposes, except what is herein excepted by this act; but the county tax shall in no case exceed the State revenue on the same subjects of taxation more than one hundred per centum for the same time."

H. Laws of 1869, p. 81.

SEC. 1. "There shall be annually levied, assessed and collected on the assessed value of all the real estate and other property subject by law to taxation in this State one-fourth of one per centum for State revenue and one-fourth of one per centum for the payment of all State indebtedness."

Approved Febuary 16, 1869.

I. Laws of 1872, p. 84. See sections 166 and 167.

Section 165. "The several county courts are empowered to levy such sums as may be annually necessary to defray the expenses of their respective counties by a tax upon all property and licenses made taxable by law for State purposes, except what is herein excepted by this act, but the county tax shall in no case exceed one-half of one per cent. on all taxable property and on all licenses made taxable by law, the county tax shall not exceed the State revenue tax more than one hundred per centum for the same time. * * * * * The State interest tax not to be construed to be State revenue tax."

Approved January 8, 1872.

2 Wagner's Stat., p. 1193, § 165.

J. Constitution of Missouri. 1 Rev. Stat., p. 80, Article X, Sec. 11.

"For county purposes the annual rate on property in counties having six million dollars or less shall not in the aggregate exceed fifty cents on the one hundred dollars valuation, * * * * said restrictions as to rates shall apply to taxes of every kind and description, whether general or special, except taxes to pay valid indebtedness now existing, or bonds which may be issued in renewal of such indebtedness."

K. Laws of 1879, p. 193.

"For county purposes the annual tax on property not including taxes for the payment of valid bonded indebtedness or renewal bonds issued in lieu thereof shall not in any county in the State exceed the

rates herein specified. In counties having six million dollars or less said rate shall not exceed fifty cents on the hundred dollars valuation." * * * *

Approved May 31, 1879.

2 Revised Statutes, p. 1337, § 6807.

5. The said county of Macon has an aggregate assessed valuation of less than six million dollars.

6. The following are further statutory provisions of the State of Missouri relative to counties and their power of taxation for the respective purposes named.

General Statutes 1865, p. 290. *Public Roads.*

Sec. 6. "For the purpose of opening and keeping in repair roads, and in order to raise the necessary funds to pay the expenses of any and all said improvements the county courts are hereby empowered and authorized to levy a special tax of three and one-half mills on the dollar of the taxable property of the county on all property taxable by law, said levy to be made at the time and in the same manner as the county revenue is now levied that hereafter all property, whether belonging to non-residents or others subject to pay a State and county tax, shall be made subject to pay a road tax, and the collection thereof to be made in the same way and manner as the State and county revenue now is or hereafter may be by law directed tobe made and enforced." In effect August 1, 1866.

Laws of 1868, p. 149.

"AN ACT to provide for the opening and repairing of public roads, and to repeal chapter fifty-two of the General Statutes of 1855."

Section 27. (Page 154.) "For the purpose of opening, repairing and improving roads, and in order to raise the necessary funds to pay the expenses of any and all of said opening, repairing or improvements, the county courts of the various counties shall levy a special tax not exceeding four mills on the dollar of the taxable property of the county and all property taxable by law, which shall be known as the 'road tax,' said levy to be made at the time and in the same manner as the county revenue is collected; and hereafter all property, whether belonging to non-residents or others, subject to pay a county tax, shall

be made subject to pay a road tax; and it shall be the duty of the county court to have all road taxes that are levied, both poll and property tax, for opening, working and repairing public roads placed in a separate column of the State and county tax-book, and collected in like manner and with same effect as the State and county revenue are or May be by law collected."

Approved March 28, 1868.

Laws of 1872, p. 139. Repealing above statute of 1868.

Sec. 38. (Page 144.) "The county courts of the respective counties are hereby authorized and required to levy upon all personal property taxable by law and upon all real estate in their counties made taxable by law, a tax of not less than one nor more than three mills on the dollar, to be called the road tax, which shall be levied and collected as the State and county taxes." * * * *

Approved March 12, 1872.

2 Revised Statutes, p. 1368. *Roads.*

Sec. 6950. "The county courts in the several counties shall at the may term thereof in each year levy upon real and personal property made taxable by law, a tax of not less than five nor more than twenty cents on the one hundred dollars." * * * *

New section, 1879.

General Statutes 1865, p. 298. *Bridges.*

Sec. 11. "The court may order the expense of building such bridge to be paid out of any money in the county treasury."

Sec. 13. * * * * "The court shall immediately make an appropriation for the other half, and if necessary levy a tax on the taxable property of the county for that purpose."

1 Wagner's Stat. 1872, p. 244.
Same provision.
2 Revised Stat. 1879, p. 855.
Same provision.

General Stat. 1865, p. 232. *Poor.*

SEC. 8. "Such county court may cause to be erected on the land so purchased or leased, a convenient poor house, and cause the necessary labor to be done and repairs and improvements made, and may

levy upon their respective counties such sum as will be sufficient to pay the purchase money and to defray the expenses."

SEC. 12. "The sum levied upon the county by virtue of the provisions of this chapter shall be levied and collected in the same manner that county taxes are levied and collected."

2 Wagners St., 1872, p. 998.

Same provision.

2 Revised St., p. 1289.

Above sections are modified and adapted to revenue laws of 1879.

General Statutes, 1865, p. 234, Insane. Sec. 47. The expense attending such confinement shall be paid by the guardian out of his estate, or by the person bound to provide for and support such insane person, or the same shall be paid out of the county treasury.

Same in Wagner's St., and Revised Statutes.

1 Wagner's St., 1872, p. 711.

Same provision.

2 Rev. St., 1879, p. 1332.

Same provision.

Laws of 1879, p. 191.

AN ACT for the better protection of the county revenue funds of the State. Session acts, Mo., 1879, p. 191.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SEC. 1. The county courts of the several counties of this State are hereby authorized and empowered, at the first regular term of such court, after the taking effect of this act, and at the May term every year thereafter, to appropriate, apportion and subdivide ALL THE REVENUES collected and to be collected, and moneys received, and to be received, in the various counties of the State, for county purposes, in the following order:

FIRST. A sum sufficient for the payment of all the necessary expenses that may be incurred for the care of paupers and insane persons of such county.

SECOND. A sum sufficient for the payment of all the necessary expenses for the building of bridges and repairing of roads, including the pay of road overseers of such county.

THIRD. A sum sufficient for the payment of the salary of all county officers where the same is, by law, made payable out of the ordinary revenues of the county.

FOURTH. A sum sufficient for the payment of the fees of grand and petit jurors, judges and clerks of election, and fees of witness for the grand jury of the county.

FIFTH. A sum sufficient for the payment of the other ordinary current expenses of the county, not hereinbefore specially provided for, which shall be known and designated as the contingent fund of such county. *Which last sum shall in no case exceed one-fifth of the total revenue of such county for county purposes for any one year.*

SEC. 2. The county courts of the various counties of this State are hereby authorized and empowered, at the first regular term of such court after taking effect of this act, and at the May term every year thereafter, to made an order and cause the same to be spread upon the records of such court, setting apart, appropriating, apportioning and subdividing the revenues of any county for county purposes, as the same is set forth and specified in section one of this act, and when the order shall thus be made and spread upon the records of any county in the State, the moneys so set apart, appropriated, apportioned and subdivided shall be held to be a sacred fund for the purposes for which it has been designated; *and the county court thus making the order shall have no power to divert the same or to permit the funds thus set apart to be drawn from the treasury of such county, except by warrants issued by order of such court, on the respective funds so set apart,* and for the purposes in section one of this act specified and set forth: Provided, that nothing in this act shall be so construed as to authorize any county court in this State to make a levy for county purposes greater than that prescribed in section 11, of article 10 of the constitution.

SEC. 3. It shall be the duty of the county treasurer *to separate and subdivide the revenues of such county in his hands and as they come into his hands, in compliance with such order of court and the provisions of this act;* and it shall be his duty to pay out the revenues thus subdivided, *on warrants* issued by order of the court, *on the respective funds* so set apart and subdivided, *and not otherwise;* and for this purpose the treasurer shall keep *a separate account with the county court of each fund,* which several funds shall be known and designated respectively as the pauper fund, road and bridge fund, fund for the payment of the salary of county officers, fund for the payment of fees of grand and petit jurors, judges and clerks of election, and witnesses for the grand jury, and contingent fund; and *no warrant shall be paid out of any fund other than that upon which it has been drawn* by order of

the court as aforesaid. Any county treasurer or other county officer who shall fail or refuse to perform the duties required of him or them, under the provisions of this act, and in the express manner provided and directed, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars, and not more than five hundred dollars, and in addition to such punishment his office shall become vacant.

SEC. 4. When a demand against the county is presented to the county court, the usual form of entry may be exemplified thus: A. B. vs. ——— county. The account of A. B. for the sum of ——— dollars being presented and inquired into, it is found by the court that the sum of ——— dollars is due him from the county, payable out of (express the particular fund as the case may require) and for which the clerk is ordered to issue a warrant. When the court shall ascertain any sum of money to be due from the county, they shall order their clerks to issue a warrant therefor in the following form: Treasurer of the county of ——— pay to ———, ——— dollars, *out of any money in the treasury appropriated for* (express the particular fund as the case may require). Given at the court house, this —— day of ———, 18—, by order of the county court. A. B.

Attest C. D., Clerk. President.

SEC. 5. All acts and parts of acts inconsistent with the provisions of this act be and the same are hereby repealed.

SEC. 6. The proper expenditure of the revenues collected for county purposes, their appropriation, apportionment and sub-division for the purposes for which they are levied and collected, and the maintenance of the credit of county governments creates an emergency requiring this act to take effect at once; therefore, this act shall take effect and be in force from and after its passage.

Approved March 19, 1879.

The county of Macon is organized under the statutes of Missouri relative to township organization, found in 2 Revised Statutes, p. 1458 *et seq.*, section 7476, (p. 1464).

"In each township in this State organized under the provisions of this chapter there shall be a board of directors composed of the township trustee and justice of the peace whose duty it shall be * * * third, to levy all taxes for township road and bridge purposes." * *

SEC. 7481. (Page 1465.) "The money necessary to defray the township charges of each township shall be levied on the taxable property in such township in the manner prescribed in the general revenue law for State and county purposes."

Acts 1881, p. 217, section 7485: "The township board of directors shall make an account of the amount of money necessary to defray township expenses during the next ensuing year; said account shall be made out not more than sixty nor less than twenty days prior to the meeting of the county court at which the assessment for county purposes is made, said account shall be signed by the president of the board and attested by the clerk, and filed with the clerk of the county court, on or before the first day of said court, who shall cause the same to be placed upon the tax book of said township: provided, that said expense shall not, together with the amount levied for road purposes and special bridge tax, exceed in any one year twenty cents on one hundred dollars valuation."

And upon the foregoing pleadings and special findings of fact, the court declares the law to be with the ————, and orders that final order and judgment be entered as follows:

[The judgment is copied in the body of the record.]

Said special finding is indorsed "October 26, 1886. Approved. Joseph Shippen, relator's attorney; John F. Mitchell, prosecuting attorney, Macon county."

And afterwards at the said April term, 1887, and on the said 23d day of April, 1887, the following further proceedings were had in this case, to wit:

ALFRED HUIDEKOPER, rel.,
vs.
MACON COUNTY COURT. } No. 1392.

This day come again the respondents by their attorney, Benj. E. Guthrie, Esq., and file their motions for a new trial and in arrest herein, and said motions being submitted to the court, it is on consideration thereof ordered that they be and are hereby overruled, to which ruling the respondents then and there excepted, and on motion of said respondents it is ordered that they have leave until the 30th inst. to file their bill of exceptions herein. It is furthered ordered that the bond to be filed herein to operate as a supersedeas be in the sum of $20,000.

[The motions filed as aforesaid will be found copied in the bill of exceptions.]

Afterwards in vacation of said circuit court, on the 28th day of April, 1887, the following further proceedings were had in said case, to wit:

A. HUIDEKOPER, Rel.,
vs.
MACON COUNTY COURT. } No. 1392.

This day come the respondents and file their bill of exceptions herein.

Which said bill of exceptions filed as aforesaid is in the words and figures following, to wit:

In the Circuit Court of the United States for the Central Division of the Western District of Missouri—April Term, 1887.

BILL OF EXCEPTIONS.

In the matters of information for further writ of mandamus filed Sept. 9, 1885, and motion for further order filed March 3d, 1886.

UNITED STATES, EX REL A. HUIDEKOPER, Relator,
vs.
MACON COUNTY COURT AND THE TREASURER. } No. 1392.

Be it remembered that on the trial and hearing of the above entitled cause, the following proceedings were had, to wit:

This cause after argument was submitted to the court on the following pleadings and evidence:

1st. Relators information for further writ of mandamus filed Sept. 9, 1885, and appearing in the record.

2d. Relators motion for further order filed November 18, 1885, and appearing in the record.

3d. Respondents return to petition for mandamus for tax filed Sept. 9, 1885, filed Nov. 21, 1885, and appearing in the record.

4th. Respondents statement of receipts and expenditures for two years ending Dec. 31, 1885, filed Feb. 24, 1886, and appearing in record and called for in special findings appearing in record proper.

5th. Motion by relator for further order filed March 3, 1886, appearing in record.

6th. Returns of respondents to motion of March 3, 1886, filed March 17, 1886 and Oct. 25, 1886.

7th. Relators motion to quash said several returns of respondents appearing in the record.

8th. On "special findings," Oct. 26, 1866. [1886,] approved.

[signed] JOSEPH SHIPPEN,
Relators Attorney.
JOHN F. MITCHELL,
Pros. Atty. Macon county.

Thereupon the court took the same under advisement and at the April term, 1887, thereof decided the same for the relator, as appears in the written opinion of Hon. David J. Brewer, Circuit Judge, handed down and filed on Friday, April 22d, 1887, which said opinion is in words and figures following, to wit:

Opinion of the Court.

In the Circuit Court of the United States for the Eastern Division of the Western District of Missouri.

UNITED STATES EX REL ALFRED HUIDEKOPER,
vs.
MACON COUNTY COURT, JUSTICES AND TREASURER. } No. 1392.

The relator, who has a judgment against Macon county and a registered warrant issued in pursuance of the mandate of this court, now asks two further orders based upon these facts. His warrant is drawn upon the general fund; in that fund is a trifle over fourteen thousand dollars. There is a prior registered warrant of seven thousand and odd dollars in favor of the county school fund. At the same time relator's warrant was registered, other warrants were also registered amounting in the aggregate to about one hundred and eighty thousand dollars. We think upon these facts the relator is entitled, as in the first place he prays, to an order on the treasurer to pay to him his pro rata of the surplus in the treasury after paying the school fund warrant. The defendants interpose two objections to this.

They say first, that orders are to be paid in the order of priority of registration, and that no warrant can be paid until it is surrendered to the treasurer. As these warrants were all registered at the same time it follows that none could be paid until there was money enough in the treasury to pay all. This would compel the treasurer to retain these funds until they had accumulated nearly, if not quite, two hundred thousand dollars. This is absurd. Whenever any reasonable amount has accumulated it should be distributed, and the order of the court is full protection to the officer.

Secondly. They say that all this money is needed for current county expenses. But this warrant was registered years ago, and the law provides that warrants shall be paid in the order of registration. Further it appears, as we shall hereafter see, that the county has not levied the full amount that it could have done for county purposes. It may be here remarked, in passing, that the division by the county board into separate funds is immaterial, for they all constitute, in fact, simply portions of one general fund.

Second. The county court levied three mills for county purposes. The limit, at the date of the issue of the bonds, as well as at the present time, was and is five mills. The relator asks an order for a further levy of two mills, the proceeds to be applied to the payment of the several registered warrants. Defendants object, that there was a township levy of two mills and that this was really for county purposes. We think not. The township is a separate organization, a body corporate with power to sue and be sued, purchase and hold real estate, make contracts and regulate its corporate property. (Second Rev. Stat. 7434). The township board levies all taxes for township, road and bridge purposes. (Second Rev. Stat. 7476). The township has control of roads and bridges. (Second Rev. Stat. 7489, and following).

So that what is levied for township purposes cannot be considered as levied for county purposes. We think, therefore, the relator is entitled to an order for the levy of two mills and the distribution of the proceeds pro rata between the holders of the several warrants.

The same order will be entered in the other mandamus cases pending in this court in which the relators hold registered warrants of same date drawn on the general fund.

DAVID J. BREWER,
Circuit Judge.

And thereupon the court rendered and entered judgment for relator on both said informations and applications, ordering the levy of said tax and the proceeds to be distributed pro rata upon the warrants of even date and registration of relator's said warrant, and further ordering said $14,394.44 dollars to be distributed and paid pro rata upon said registered warrants. To which said action, order and judgment of the court the respondents at the time objected, for the reasons that said finding and judgment were against the law and evidence and were against the pleadings and evidence, and were not sustained by the pleadings nor the facts; and because the court erred in the interpretation and construction of the statutes and laws of Missouri in relation to township organization; and the power and authority of the county court of Macon county to levy taxes; and in the application of said $14,394.44 to the warrants in question, and diverting the same from the payment of registered, outstanding and unpaid warrants issued for necessary annual current expenses of said county; and because the court erred in proceeding in a mandamus, a strictly legal proceeding, to grant equitable relief by marshaling assets and pro-rating the same,

under the facts and circumstances of this case; which objections of respondents were by the court considered and overruled, and said judgment entered, to all of which action and ruling of the court, the respondents at the time duly excepted, and still excepts.

And thereupon, within four days, to wit: On the 23d day of April, 1887, at said term of said court, respondents filed their motion for a new trial and hearing, which said motion is in words and figures following, to wit:

Motion for a new trial.

In the Circuit Court of the United States, for the Central Division of the Western District of Missouri. April term, 1887.

Motion for new trial—In relator's motions to pay $14,000, and to levy two mill tax.

UNITED STATES EX REL. ALFRED HUIDEKOPER, *Respondent,*
vs.
MACON COUNTY COURT AND TREASURER, Respondents.

Now comes the respondents in the above entitled cause and moves the court to set aside its finding and judgment made and entered in this cause, and grant the respondents a new hearing and trial for the following reasons, to wit:

1. Because the finding of the court is against the facts of the case.
2. Because the finding is against the admissions of the pleadings.
3. Because the finding is against the law and the evidence.
4. Because the court misconceived the facts of the case.
5. Because the court erred in the application of the law to the facts of the case.
6. Because the court erred in interpretation and construction of the law and statutes involved in the case.
7. Because the finding and judgment are not supported by the facts and law of the case.

R. G. MITCHELL,
Prosecuting Attorney.
And J. T. JONES,
With SEARS & GUTHRIE,
Attorney for Respondents.

Which said motion was on the same day heard and duly considered by the court and by the court overruled; to which said action of

the court, in so overruling said motion, the respondents at the time duly excepted and still excepts.

And within four days, to wit: on the said 23d day of April, 1887, at said term of court, respondents filed their motion in arrest of judgment, which said motion is in words and figures following, to wit:

Motion in arrest of judgment.

In the Circuit Court of the United States for the Central Division of the Western District of Missouri, April term, 1887. Motion in arrest of judgment.

UNITED STATES EX REL. ALFRED HUIDEKOPER, Relator,
vs.
MACON COUNTY COURT AND THE TREASURER.

(On motions and applications of relators for orders to pay $14,000 on his warrant, and to levy two mill tax to be applied on his warrant).

Now come the respondents and move the court to arrest and set aside the orders and judgments made and entered ordering respondents to pay out of the treasury of Macon county fourteen thousand and odd dollars on the warrant of relators and others, and to levy a two mill tax on the property of Macon county for —— years, amounting to about eleven thousand dollars per annum, for the following reasons, to wit:

1. Because the pleadings and facts do not support said judgment.

2. Because the orders and judgment are against the law.

3. Because the court erred in its construction and application of the statutes of Missouri in relation to township organization.

(Revised statutes of Missouri, chapter 162, Rev. Stat. 1879, and the amendments thereof).

4. Because the court erred in its construction and application of the laws of Missouri, in relation to the limit of taxation conferred upon counties.

5. Because the court's construction of said statutes as to taxation in counties and townships is in violation of the constitution of Missouri of 1875, limiting rates of taxation; being section 11 of article 10 of said constitution; and Macon county having less than six millions of taxable property.

6. Because the court erred in ordering said fourteen thousand to be paid on the warrants of relator's, when the facts and pleading show

that there are registered, outstanding and unpaid warrants for current annual necessary expenses more than sufficient to absorb said fourteen thousand dollars.

R. G. MITCHELL,
Prosecuting Attorney.
JOHN T. JONES, SEARS and GUTHRIE,
Attorneys for Respondents.

Which said motion was on the same day heard and duly considered by the court, and was by the court overruled, to which said action of the court in so overruling said motion the respondents then and there at the time duly excepted and still excepts.

And respondents in open court prayed a writ of error from the said judgment entered for relator and that the court fix the bond of respondents and give them time to prepare and present their bills of exceptions.

And the court having duly considered said prayer of respondents granted the same, fixed the bond at $20,000, with leave to file bill of exceptions on or before April 30, 1887.

And now at this day come the respondents and present this, their bill of exceptions, and prays that the same be allowed, signed and sealed, and made a part of the record which is done, this —— day of April, A. D. 1887.

[SEAL] A. KREKEL,
Judge.

And afterwards, on the 23d day of May, 1887, there was issued out of the clerk's office of said circuit court, a peremptory writ of mandamus, in the words and figures following, to wit:

Peremptory Mandamus.

CENTRAL DIVISION OF THE WESTERN DISTRICT OF MISSOURI, *Sct.*
THE PRESIDENT OF THE UNITED STATES OF AMERICA.

To the county court of Macon county and the justices thereof, Greeting:

WHEREAS, it has been represented to our circuit court of the United States for the Central Division of the Western District of Missouri, that Alfred Huidekoper, the relator herein, is a citizen of the State of Pennsylvania, that the county of Macon is a municipal corporation created by and a citizen of the State of Missouri, whose financial affairs are managed by a county court composed of justices,

who are citizens of said State; that on the 19th day of November, 1879, said relator recovered in the circuit court of the United States for the Eastern Division of the Western District of Missouri, a judgment against the said county of Macon for the sum of twenty-eight thousand and thirty-three dollars, ($28,033.), with interest and costs; which judgment was based on interest coupons detached from bonds issued by the said county to the Missouri & Mississippi Railroad Company, under the authority of the charter thereof, and were issued and dated May 2, 1870; and that thereafter, on the 29th day of April, 1884, pursuant and in obedience to the peremptory mandate of said circuit court, in this cause, the said county court, respondents herein, issued and delivered to said relator a warrant upon the treasurer of said county, in words and figures as in the information in said cause set forth, which said warrant at the date thereof represented the debt, interest and costs of said judgment; that on the said 29th day of April, 1884, said warrant was duly presented for payment to the treasurer of said county who refused to pay the same and certified on the back thereof in words and figures as follows, to wit:

"Presented and not paid for want of funds this 29th day of April, 1884, at 9:55 p. m., with warrants Nos. 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14. J. Morrow, treasurer." Which said judgment and warrant are still due and owing to said relator and wholly unpaid; and,

WHEREAS, it has been further represented that the laws of the State of Missouri, existing at the time of the issue of said bonds and coupons, to wit: May 2, 1870, authorized the county court of Macon county to levy and collect a tax of one-half of one per cent. upon all the taxable wealth of said county for county revenue in addition to the twentieth of one per cent. tax authorized by the charter of said railroad company, and said laws further provided that payment of warrants drawn upon the funds of said county should be made in the order of the presentation thereof to the county treasurer, which said laws still remain and exist in full force and effect; and,

WHEREAS it has been further represented that the said county court of Macon county, respondents herein, has for the year 1885 ordered to be levied upon every one hundred dollars of valuation of taxable property in said county, as well as upon all merchants and other advalorem duties for county revenue, only the sum of thirty cents instead of the fifty cents authorized by law as aforesaid, and has further ordered that said county revenue for the year 1885 be apportioned as follows: To the salary fund, one-third of said revenue; to the contingent fund, one-fifth; to the poor house, one-fifth; to roads and bridges, one-sixth; to

jury and elections the balance; and that the clerk certify said order to the treasurer. And it has been further represented that a demand has been made on said county court to pass and enter of record an order annulling and rescinding said order of apportionment, and to increase the tax levy for the current year of 1885 from said thirty cents to the fifty cents authorized by law upon every one hundred dollars of valuation of taxable property in Macon county as well as upon merchants' licenses and other advalorem duties for county revenue, and to apply or cause to be applied the proceeds of said tax to the payment of said relator's judgment and warrant, and that said demand has been refused.

Now, therefore, you, the county court of Macon county and the justices thereof, are hereby commanded to forthwith pass and enter of record an order annulling and rescinding said order in the information in said cause mentioned apportioning the county revenue for the year 1885 into separate and distinct funds; that you increase the tax levy for the year 1885 from thirty cents to fifty cents by a further levy of twenty cents on the one hundred dollars for said year upon every hundred dollars of valuation of taxable property in Macon county as well as upon all merchants' licenses and other advalorem duties for county revenue, said last mentioned levy to be made forthwith and collected together with the regular annual levies required by law to be made in the present year of 1887, and further to apply the proceeds of such levy pro rata when and as the same is collected upon and towards the payment of all the said registered warrants of even date and registration with relator's warrant, and issued under and by virtue of mandamus proceedings in said court.

And the said respondents are hereby further commanded to pay or cause to be paid, pro rata, upon the relator's warrant, and the registered warrants of even date and registration therewith, issued under and by virtue of mandamus proceedings in said court, the rest and residue of fourteen thousand four hundred and ninety-three dollars and forty-four cents ($14,493.44), together with any other and further funds accumulated in the county treasury of said county since the first day of January, 1886, after paying and discharging with interest the warrant No. 15 in favor of the school fund for seven thousand eight hundred and forty-eight dollars and ninety-nine cents ($7,848.99) of prior registration to the warrant of relator, and said other warrants of even date and registration with relator's warrant.

Said respondents, and the officers, and each of them, now holding and exercising the respective offices of the respondents be and they are hereby required to return this writ and certify due obedience

thereto (under their respective corporal oaths) on the first Monday of September next, (September 5, 1887).

WITNESS, the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States. Issued at office [SEAL] in the City of Jefferson, in said district, the 23d day of May, 1887.

H. C. GEISBERG,
Clerk.

Marshal's Return.

United States of America, Eastern District of Missouri, ss.

I hereby appoint Calvin C. Colt my special deputy to serve this writ, serving mandamus writs against Macon county.

J. E. D. COUZINS,
U. S. Marshal.

Executed the within writ of mandamus by delivering duplicate of the same to Benjamin Gooding, clerk of the county court of Macon county, at the office of said court in Macon, also by delivering duplicates of said writ to C. R. Perry, T. J. Singleton and R. J. Owens, (in person) judges of the county court of Macon county. All done on the 27th day of May, 1887, in the county of Macon, in the Eastern District of Missouri.

J. E. D. COUZINS,
U. S. Marshal.
By C. C. COLT.
Special Deputy.

Marshal's fees:		
Four services		$8 00
Actual expenses:		
Livery hire	$5 50	
Hotel bills	4 00	
Railroad fare	7 38	16 88
Total		$24 88

I, C. C. Colt, deputy U. S. Marshal, make oath and state that the actual expenses incurred and charged in the service of this writ are true and correct.

C. C. COLT.

Subscribed and sworn to before me this 3d day of June, 1887.

[SEAL] JOHN M. PARRY, Clerk.

Afterwards, in vacation of the said circuit court, on the 16th day of June, 1887, the following further proceedings were had in this case, to wit:

This day the following order was received and filed in this case, to wit:

"In the Circuit Court of the United States for the Central Division of the Western District of Missouri, at chambers, Kansas City, Mo., Wednesday, June 15, 1887.

ALFRED HUIDEKOPER, Relator,

vs.

THE MACON COUNTY COURT AND THE JUSTICES THEREOF, AND TREASURER OF SAID COUNTY, Respondents. } No. 1392.

This day there is presented to the undersigned judge, at his chambers, the writ of error in the above entitled cause, to reverse the judgment therein, a citation directed to said relator, and an appeal bond in the sum of twenty thousand dollars; whereupon on consideration of the premises the writ of error is allowed, and citation signed by said judge and said bond is approved and ordered to be filed and made a part of the record in the case. It is further ordered that a supersedeas be granted staying all further proceedings on said judgment and order entered herein on the 23d day of April, 1887, until the determination of this case in the Supreme Court of the United States.

(Signed) A. KREKEL,
Judge."

The appeal bond filed and approved as aforesaid, is in words and figures as follows:

Appeal bond.

KNOW ALL MEN BY THESE PRESENTS, That we, Macon county, by R. J. Owens, T. J. Singleton, county judges as principal, and ——— as sureties, are held and firmly bound unto Alfred Huidekoper in the full and just sum of twenty thousand dollars, to be paid to the said Alfred Huidekoper, to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally by the presents, sealed with our seals and dated this sixth day of June, in the year of our Lord, One thousand Eight Hundred and Eighty-seven.

WHEREAS, lately at the April term, A. D. 1887, of the circuit court of the United States, for the Central Division of the Western District of Missouri, in a suit pending in said court between the United States ex rel, Alfred Huidekoper plaintiff, and the county court of Macon county and the justices thereof, and the treasurer of said county, defendants, judgment was rendered against the said county court and the justices thereof. and the treasurer of Macon county; and the said county court and the justices thereof, and the treasurer of said county having obtained a writ of error of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said plaintiff, citing and admonishing him to be and appear at a Supreme Court of the United States to be held at Washington, D. C., on the second Monday of October next:

Now, the condition of the above obligation is such, that if the said defendants shall prosecute said writ to effect and answer all damages and costs, if they fail to make good their plea, then the above obligation to be void, else to remain in full force and virtue.

Sealed and delivered in presence of

MACON COUNTY, by R. J. OWENS, P. J. [Seal.]
T. J. SINGLETON, [Seal.]
W. H. TERRELL, [Seal.]
THOS. B. JACKSON, [Seal.]
F. A. DESSERT, [Seal.]
J. A. HUDSON, [Seal.]

Attest with the seal of said court.

[SEAL.]

J. B. GOODDING,
Clerk of County Court.

Approved by A. KREKEL, Judge.

Affidavit of Surety on Bond.

CENTRAL DIVISION, WESTERN DISTRICT OF MISSOURI, } *ss.*
STATE OF MISSOURI, COUNTY OF MACON, }

Personally appeared before me, Robert G. Mitchell, a notary public within and for the county and State aforesaid, J. A. Hudson, who, on his oath, states that he is a resident of Macon county, Missouri; that he is, by occupation, a ————, that the kind, location and valuation of his property, worth over and above all liabilities and exemptions, is as follows, to wit:

Personal property in ..... county.....	$.....
Real estate in Macon county.....	3,000
Real estate in ..... county.....	.....
Total valuation.....	$.....

(Signature) J. A. HUDSON.
Subscribed and sworn to before me this 9th day of June, 1887.
[SEAL.] ROBERT G. MITCHELL,
Notary Public.

Commission expires February 24, 1891.

Affidavit of Surety on Bond.

UNITED STATES OF AMERICA,
CENTRAL DIVISION, WESTERN DISTRIT OF MO., } *Sct.*
State of Missouri, County of Macon.

Personally appeared before me, Robert G. Mitchell, a notary public within and for the county and State aforesaid, ————, who, on his oath, states that he is a resident of Macon county, Missouri; that he is by occupation, a ————, that the kind, location and valuation of his property, worth over and above all liabilities and exemptions, is as follows, to wit:

Personal property in..... county.....	$
Real estate in Macon county.....	10,000.00
Real estate in ..... county.....	.....
Total valuation.....	$10,000.00

(Signature) F. A. DESSERT.
Subscribed and sworn to before me this 9th day of June, 1887.
[SEAL.] ROBERT G. MITCHELL,
Notary Public.

Commission expires February 24, 1891.

United States of America, Central Division, Western District of Mo., Sct.

COUNTY OF MACON, } ss.
STATE OF MISSOURI. }

Before me, Robert G. Mitchell, notary public, within and for Macon county, Missouri; personally appeared W. H. Terrell, to me well known, who upon oath, states that he is worth over and above his indebtedness, the sum of five thousand dollars, and that he owns real property to that amount, subject to execution in Macon county, Mo.

W. H. Terrell.

Subscribed and sworn to before me this 9th day of June, 1887.

[SEAL.] ROBERT G. MITCHELL,
Notary Public.

Commission expires February 24, 1891.

United States of America, Central Division, Western Division of Mo. Sct.

COUNTY OF MACON, } ss.
STATE OF MISSOURI. }

Before me, Robert G. Mitchell, a notary public, within and for Macon county, Missouri; personally appeared Thomas B. Jackson, to me well known, who, upon oath, states that he is worth over and above his indebtedness the sum of ten thousand dollars, and that he owns real property to that amount, subject to execution in Macon county, Missouri.

THOS. B. JACKSON.

Subscribed and sworn to before me this 9th day of June, 1887.

[SEAL.] ROBERT G. MITCHELL,
Notary Public.

Commission expires February 24, 1891.

United States of America, Western District of Missouri. Sct.

I do hereby certify that the parties subscribing the within bond are respectively over the age of twenty-one years and are competent to contract, and that their signatures to said bond are genuine; I further certify that said bond is good and sufficient.

Witness my hand this 9th day of June, 1887.

S. G. BROCK,
U. S. Commissioner.

Certified copy of order attached to bond.

STATE OF MISSOURI, } ss.
COUNTY OF MACON, } May Adjourned Term, 1887.

In the County Court of said county, on the 7th day of June, 1887, the following, among other proceedings were had, viz:

Ordered that the judges and clerks of this court, sign and execute in the name of and on behalf of Macon county, as principal, the bond for appeal and supersedeas in the case of U. S. ex rel, Alfred Huidekoper vs. The Macon County Court, about to be taken to the United States Supreme Court, on writ of error from the circuit court of the United States for the Central Division of the Western District of Missouri.

STATE OF MISSOURI, } ss.
COUNTY OF MACON. }

I, J. B. Goodding, Clerk of the County Court, in and for said county hereby certify the above and foregoing to be a true copy of the proceedings of our said county court, on the day and year above written, as the same appears of record in my office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said court, at office, in the city of Macon, this, the 13th day of June, 1887.

[SEAL.]

J. B. GOODDING,
Clerk County Court.

Afterwards, in vacation, on the 3d day of September, 1887, the following further proceedings were had in this case and appear of record, to wit:

A. HUIDEKOPER, rel.
vs.
MACON CO. COURT et al. } No. 1392.

This day there is received by mail and filed herein a stipulation in regard to the printing of the record in this cause.

Stipulation as to printing record.

ALFRED HUIDEKOPER, Plaintiff,
vs.
MACON COUNTY, et al., Defendants. } No. 1392.

July 16, 1887.

The above cause having been removed by writ of error to the Supreme Court of the United States, it is agreed by said parties, plaintiff and defendants, that instead of having the record printed at Washington City, D. C., under the supervision of the clerk of the said Supreme Court, said defendants, the plaintiffs in error to said Supreme Court, may have said record printed in Jefferson City, Missouri, under the supervision of H. C. Geisberg, Clerk of the U. S. Circuit Court, Western Dist. of Missouri, Central Div., and that the record so printed may be filed and used with like effect with the printed records required by rule ten (10) of said U. S. Supreme Court.

It is further agreed that this stipulation shall be filed and made a part of the record in the above cause and certified as a part of the record to said Supreme Court.

JOSEPH SHIPPEN,
Attorney for Plaintiff.

BEN ELI GUTHRIE and ROB'T G. MITCHELL,
Attorneys for Macon county et al. Defendants.

CLERK'S CERTIFICATE.

UNITED STATES OF AMERICA,
CENTRAL DIVISION OF THE
WESTERN DISTRICT OF MISSOURI. } SCT.

I, Henry C. Geisberg, Clerk of the Circuit Court of the United States, in and for said District and Division, DO HEREBY CERTIFY, that the foregoing writing is a true transcript of the record and proceedings in the case entitled United States ex rel. Alfred Huidekoper, Relator, vs. Macon County Court, and the Justices thereof, and Treasurer of said County, Respondents, as fully as the same remain on file and of record in my office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the seal of said Court, at office, in the City of Jefferson, in said District, this first day of October, 1887.

[SEAL]

H. C. Geisberg
Clerk.

IN THE

SUPREME COURT OF THE UNITED STATES

No. 615, October Term, 1889.

THE COUNTY OF MACON, the Justices thereof, and the Treasurer of said County, Respondents,

Plaintiffs in Error.

VERSUS

ALFRED HUIDEKOPER.

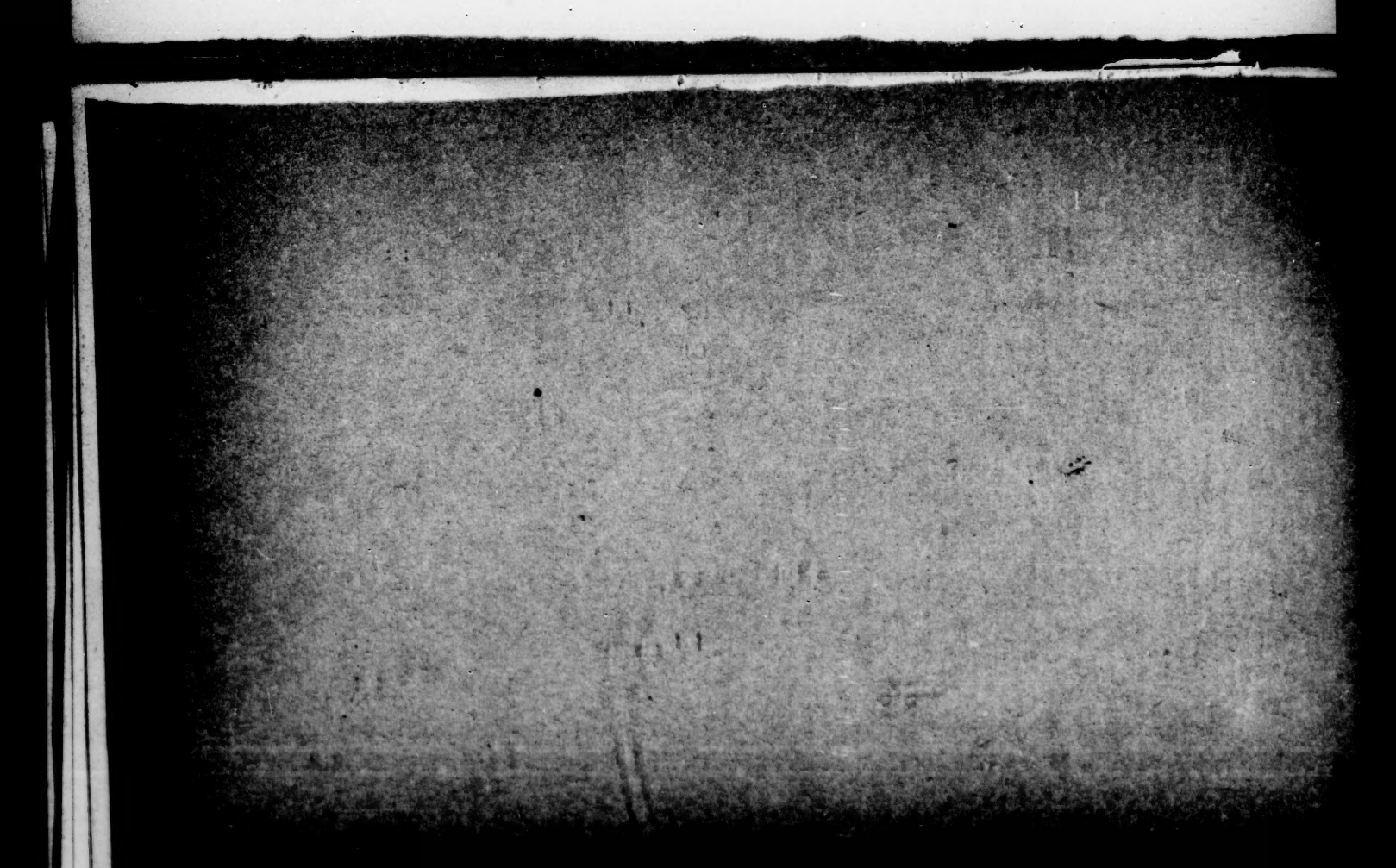
IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE CENTRAL DIVISION OF THE WESTERN DISTRICT OF MISSOURI.

MOTION

OF DEFENDANT IN ERROR TO ADVANCE THIS CASE FOR HEARING.

JOSEPH SHIPPEN,

Attorney for Defendant in Error.



IN THE

SUPREME COURT OF THE UNITED STATES

No. 615, October Term, 1889.

THE COUNTY OF MACON, the Justices thereof, and the Treasurer of said County, Respondents,

Plaintiffs in Error.

VERSUS

ALFRED HUIDEKOPER.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE CENTRAL DIVISION OF THE WESTERN DISTRICT OF MISSOURI.

MOTION

OF DEFENDANT IN ERROR TO ADVANCE THIS CASE FOR HEARING.

And now comes Alfred Huidekoper, the defendant in error, by his attorney, and moves the Court to advance this case for hearing at an early day, pursuant to Section 4 of Rule 26, because the case has been once adjudicated upon its merits.

JOSEPH SHIPPEN,
Attorney for Defendant in Error.

STATEMENT AND REASONS.

This case, which is a mandamus proceeding to enforce the payment of a judgment, has already been adjudicated upon its merits by this Court, November 12, 1883, in Macon County Court [erroneously printed Mason County Court] vs. Alfred Huidekoper, relator, reported in 109 U. S. 229.

The history of the case was that Huidekoper recovered in the United States Circuit Court for the Eastern Division of the Western District of Missouri a judgment against Macon County for $28,032.00 and costs on the 20th of November, 1879. Thereupon he instituted mandamus proceedings to enforce the payment thereof by the County pursuant to the principles adjudicated by this Court in

United States v. County of Clark, 96 U. S. 211, and adhered to in

United States v. County of Macon, 99 U. S. 592.

The relator's demurrer to respondent's return having been sustained and a peremptory writ ordered, the case was brought here by writ of error, was fully argued with other cases and decided upon its merits against the respondent and in favor of the relator who is now again in this Court as defendant in error. This is fully shown by the records and files of this case when formerly in this Court; and those proceedings are fully set forth in the present transcript. Pursuant to the mandate of this Court [Printed Record, p. 197] and the peremptory mandamus of the U. S. Circuit Court, the respondent issued its warrant on the general funds of Macon County, and the further proceedings taken to reap the benefit of the decision of this Court and enforce the payment of said warrant is all that is now before this Court. The record shows by the special finding of facts (page 55), that there is in the treasury a fund applicable to said warrant, and that there resides in the County Court unexecuted power to levy further tax to pay said warrant. These are subsidiary questions, and in view of the great and vexatious delay created by the respondent in meeting its obligations or any part thereof since the recovery of the original judgment ten years ago, it is submitted that this case falls clearly under the 4th section of Rule 26, and should be forthwith advanced for

hearing at an early day, instead of being subjected to two or more years further delay, which itself constitutes success to Macon County in resisting and defeating the relator and its other creditors. Respectfully submitted,

JOSEPH SHIPPEN,
Attorney for Defendant in Error.

Supreme Court U. S.
FILED,
JAN 7 1890
JAMES H. McKENNEY
CLERK

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

No.

MACON COUNTY COURT AND THE JUSTICES THEREOF, PLAINTIFFS IN ERROR,

vs.

THE UNITED STATES EX REL. ALFRED HUIDEKOPER.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN (NOW CENTRAL) DIVISION OF THE WESTERN DISTRICT OF MISSOURI.

STATEMENT AND BRIEF FOR PLAINTIFFS IN ERROR.

JAMES CARR,
OF COUNSEL FOR PLAINTIFFS IN ERROR.

Nixon-Jones Printing Co., 212 Pine St., St. Louis.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

No.

MACON COUNTY COURT AND THE JUSTICES THEREOF, PLAINTIFFS IN ERROR,

vs.

THE UNITED STATES EX REL. ALFRED HUIDEKOPER.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN (NOW CENTRAL) DIVISION OF THE WESTERN DISTRICT OF MISSOURI.

STATEMENT OF THE CASE.

On the 9th day of September, 1885, Alfred Huidekoper, the relator, filed an information in the court below for a further alternative writ of mandamus as follows: —

To the Honorable Judges of said court of the United States:

Now again comes Alfred Huidekoper and further relates to the court that he is a citizen of the State of Pennsylvania and that the County of Macon is a municipal corporation created by and a citizen of the State of Missouri, whose financial affairs are managed by a County Court composed of justices who are citizens of said State; that on the 19th day of November, 1879, he recovered in said United States Circuit Court for the Eastern Division of the Western District of Missouri a judgment against the said County of Macon for the sum of twenty-eight thousand and thirty-three dollars ($28,033) with interest and costs, which judgment was based on interest coupons detached from bonds issued by the said county to the Missouri & Mississippi Railroad Company, under the authority of the charter thereof and were issued and dated May 2, 1870, and

that thereafter, on the 29th day of April, 1884, pursuant and in obedience to the peremptory mandate of this court in this case, the said County Court, respondent, issued and delivered to your relator a warrant upon the Treasurer of said county in words and figures as follows, to wit:

"The Treasurer of Macon County, Missouri, will pay to Alfred Huidekoper thirty-five thousand six hundred and seventy-seven and 47-100 dollars ($35,677.47) out of the general funds of said county in payment of a judgment rendered in the United States Circuit Court against Macon County, on coupons of bonds issued to the Missouri & Mississippi Railroad Company.

"Given at the court house this 29th day of April, A. D. 1884, by order of court. LEE LINGO,

Attest: President."

JAS. G. HOWE, county clerk."

Which said warrant represented at the date thereof the debt, interest and costs of said judgment; that on the said 29th day of April, 1884, said warrant was duly presented for payment to the Treasurer of said county, who refused to pay the same and certified on the back thereof in words and figures as follows, to wit:

"Presented and not paid for want of funds, this 29th day of April, 1884, at 9:55 P. M., with warrants Nos. 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14.

J. MORROW, Treasurer."

Which said judgment and warrant are still due and owing to your relator and wholly unpaid.

And your relator further relates that the laws of the said State of Missouri, existing at the time of the issue of said bonds and coupons, to wit: May 2, 1870, authorized the County Court of Macon County to levy and collect a tax of one-half of one per cent. upon all the taxable wealth of said county for county revenue in addition to the twentieth of one per cent. tax authorized by the charter of said Railroad Company, and said laws further provided that payment of warrants drawn upon the funds of said County should be made in the order of the presentation thereof to the County Treasurer, which said laws still remain and exist in full force and effect.

And your relator further relates that said Macon County Court respondent has, for the current year of 1885, ordered to be levied upon every one hundred dollars of valuation of taxable property in said County, as well as upon all merchants and other advalorem duties for county revenue only the sum of thirty cents instead of the fifty cents authorized by law as aforesaid, and has further ordered that said county revenue

for the year 1885 be apportioned as follows: To the salary fund one-third, (1-3) of said revenue; to the contingent fund, one-fifth (1-5); to the poor house, one-fifth (1-5); to roads and bridges, one-sixth (1-6); to jury and elections, the balance, and that the clerk certify said order to the Treasurer.

And your relator further relates that a demand has been made on said County Court to pass and enter of record an order annulling and rescinding said order of apportionment and to *increase the tax levy for* the current year of 1885 from said thirty cents to the fifty cents authorized by law upon every one hundred dollars of valuation of taxable property in Macon County, as well as upon all merchants' licenses and other advalorem duties for county revenue and to apply or cause to be applied the proceeds of said tax to the payment of your relator's said judgment and warrant, and that said demand has been refused.

Wherefore your relator prays the Court to order and issue a further writ of mandamus herein, directed to the said County Court of Macon County and the Justices thereof, commanding them to pass and enter of record an order *annulling* and *rescinding* said order apportioning the said County revenue for the year 1885, and further to increase the tax levy for the current year of 1885 from said *thirty* cents to the *fifty* cents authorized by law upon every one hundred dollars of valuation of taxable property in Macon County, as well as upon all merchants' licenses and other advalorem duties for county revenue, by a further levy of *twenty* cents upon every one hundred dollars of said valuation, etc., and further to apply or cause to be applied the proceeds of said county revenue tax of one-half of one per cent. to the payment of your relator's said judgment and warrant with interest and costs, including the costs of this proceeding, and to pay the same according to law. (Record, p. 27.)

No order for the issue of any alternative writ on this information was made.

On the third Monday in November following, the plaintiffs in error appeared and filed a return to said information. This return is lost. (Record, p. 30.)

On the 18th day of November, 1885, on motion of the relator the court below made an order that the County Court of Macon county and the treasurer "respectively make and file in said court on the first Monday in March, 1886, full returns and statements under oath relative to the administration of the county revenue of Macon county since the first day of January, 1884, to the date of filing said returns.

Wherein they shall state what is the aggregate assessed value of the property of said county for said years of 1884 and 1885, what taxes were levied thereon for county revenue and

when, what amounts were collected on said levies, what dispositions have been made of the amounts so collected, what subdivisions into special funds have been made of said county revenue, what payments have been made to each of said funds, and what balances remain in hand to the credit of each of said special funds and to the credit of the general fund, what warrants have been heretofore issued and registered drawn on the general funds,, and what if any payments have been made thereon. (Record, p. 30.)

On the 21st day of November, the plaintiffs in error filed the following amended return to said information for an alternative writ of *mandamus*, viz.: —

Now comes Macon County Court and waiving the issuance of an alternative writ of *mandamus* herein for return and answer to plaintiffs' petition filed September 9, 1885, state that it is admitted that Macon county is a municipal corporation whose financial affairs are administered by a county court, that relator recovered judgment for the amount and at the time and place alleged, and that relator procured a warrant on the treasurer of Macon in the manner and form alleged, and that said warrant is now wholly unpaid. It is further admitted that by the law of the State of Missouri existing at the time of the issue of said bonds, the County Court of Macon county was authorized to levy and collect a tax of one-half on one per cent. upon all the taxable wealth of said county for county revenue in addition to one-twentieth of one per cent. authorized by the charter of said railroad company which laws are now in full force as alleged.

Respondent further answering denies each and *other* allegation in relator's petition contained, except as to relator's demand. Respondent avers that said Macon county is now and has for a long time been duly organized under the general laws of Missouri providing for township organization, and that the affairs of said county are now managed and controlled under and by virtue of the said statute providing for township organization, and the general laws of the State of Missouri; avers that said county court has caused to be levied for the year 1885 upon all the taxable wealth of said county of whatsoever kind or description the full sum of fifty cents on the one hundred dollars valuation thereof, as will fully appear from exhibits A, B and C hereto attached and made a part of this return, which sum is the greatest amount that said court is permitted to levy for any one year by the Constitution and the laws of the State of Missouri, that said tax is levied and divided as follows, to wit: For county revenue, the sum of thirty cents on the one hundred dollars valuation, which is subdivided as alleged in relator's petition; for township and road tax, the sum of

twenty cents on the one hundred dollars valuation. Wherefore respondent says it has levied the full amount of tax authorized by law for the year 1885, and having fully answered respondent asks to be discharged. (Record, p. 32).

Exhibit A, filed with said return, shows that on the 6th day of May, 1885, the county court of Macon county levied taxes upon every $100 valuation of taxable property in Macon county as follows: For State interest fund, 20 cents; for State revenue fund, 20 cents; for *county* fund, 30 cents; for M. & M. R. R. fund, 5 cents. (Record, pp. 33, 34.)

Exhibit B shows that the Township Boards for the several Townships in Macon county had levied for township and road purposes for the year 1885, 20 cents on the $100 valuation of taxable property and on the 4th day of June, 1885, the county court made an order that the clerk of the county court should extend (the statutes of Missouri made it the duty of the county clerk from time almost immemorial to do so), on the several tax books of the respective townships the rates which had been levied for township purposes. And the county court further ordered that the several township clerks should extend upon the tax books of their respective townships the rates levied for road purposes. (Record, pp. 34, 35.)

Exhibit C shows that on the 6th day of May, 1885, the county court made an order that the county revenue levied and collected for the year 1885, should be apportioned and subdivided, as contemplated under and by virtue of section 5819, of the Revised Statutes of Missouri, at page 1339, as follows: To the Salary Fund, $\frac{1}{3}$ of said Revenue; to the Contingent Fund, $\frac{1}{5}$ of said Revenue; to the Poor House Fund, $\frac{1}{5}$ of said Revenue; to the Road and Bridge Fund, $\frac{1}{6}$ of said Revenue; to the Jury and Election Fund, balance of said Revenue. And the clerk certify said order to the Treasurer. (Record, p. 36.)

On the 25th day of November, 1885, the case was submitted to the court and taken under advisement. (Record, p. 37.) Three days thereafter, in vacation, the court, treating this *mandamus* proceeding as a suit in *equity*, on its own motion made the following order, viz.:—

The clerk of this court is directed to ascertain the number and amount of the judgments against Macon County on bonds issued to the Missouri & Mississippi Railroad Company, and apply to the attorneys in the cases for their consent to the appointment of a Special Master to examine into and report upon the financial condition of said county, and management of the county funds of said county for the purpose of establishing some rule for the payment of the warrants drawn on the general and special funds in the treasury of said county. (Record, p. 37).

On the 24th day of February, 1880, the judges of Macon county court and the treasurer filed a detailed statement, under oath of the receipts and expenditures of the county revenue of Macon county for the two fiscal years ending December the 31st, 1885, showing the balance of the revenue of the county (which had been levied and collected to defray the current expenses of the county) on hand on the first day of January, 1886, to be $14,394.44. (Record, pp. 38 to 45 inclusive.)

They also filed a detailed statement of the receipts and expenditures of the "Missouri and Mississippi Railroad Fund" of Macon county, Missouri, for the fiscal year ending January the 1st, 1886, showing a balance on hand that day of $447.30. (Record, p. 46.)

Also a statement of warrants issued on the general fund of Macon county to January the 1st, 1886, showing the date and amount of each warrant and the name of the person to whom issued, aggregating the sum of $184,272.75. (Record, p. 47.)

Also a statement of the subdivision of county revenue for the years 1884 and 1885. (Record, pp. 46, 47.)

On the 3rd day of March, 1886, the relator filed a motion requiring the treasurer of Macon county to forthwith pay the balance in cash ($14,394 44) in the treasury of said county on his general warrant No. 2, and to certify his obedience to said order under oath. (Record, pp. 48, 49.)

The county court and treasurer, on the 17th day of March following, filed the following answer to said motion, viz.: —

Now again come respondents in the above entitled cause and for answer to relator's motion for further order filed 3d day of March, 1886, and admits that a warrant was issued to relator for the amount and in the manner alleged; admits that by the financial report filed herein by respondents there was in the hands of the treasurer on the 1st day of January, 1886, the sum of $14,394.44, and that said sum is now in the hands of said treasurer.

Respondents further answering say that the sum now in the hands of said treasurer as aforesaid is the total amount paid into the said treasury since relator's warrant was issued and registered; that for the years 1883, 1884 and 1885 caused to be assessed and levied on all the taxable property of whatsoever kind and description the full sum of one-half of one per cent. for county purposes, and one-twentieth of one per cent. for M. & M. Railroad purposes, which said sums are all respondents are authorized by law to levy,; that the whole of said tax levied for county purposes has not been and *is not sufficient to pay the current and ordinary expenses of said ounty for said years*, and that no part of the same now n hand can be by law applied to the payment of

plaintiff's warrant; that there are now outstanding and unpaid warrants far in excess of the sum on hand issued in payment of the ordinary current expenses of said county for the years 1883, 1884 and 1885. Respondents further answering say that prior to the issuing of relator's warrant and the registration of the same, respondents, the county court, caused to be issued to the Macon county school fund a warrant for the sum of $7,848.99 which said warrant was registered for payment prior to and before relator's said warrant; that said school fund warrant was issued to pay a valid and outstanding indebtedness of said county to said school fund; that said warrant still remains registered as aforesaid and is wholly unpaid; and having answered, respondents pray that the relief sought may be denied with such further orders as may to the court seem just and proper. (Record, pp. 50, 51.)

And on the 22d day of September, 1886, the County Court and Treasurer filed an amended answer or return to said motion setting out that on the 18th day of April, 1884, they had been duly served with alternative writs of *mandamus* issued out of the court below at the relation of fourteen other judgment creditors of Macon county upon judgments recovered upon bonds issued by Macon county to the Missouri and Mississippi Railroad Company, specifying the amount of each judgment and the name of the party in whose favor it was rendered, commanding the County Court of Macon county to draw warrants in favor of the relators therein for the respective amounts of their said judgments upon the general funds of Macon county, and commanding the Treasurer of Macon county to register and pay said warrants out of said funds then in his hands and thereafter coming into his hands in the order of their registration. That on the 29th day of April, 1884, said County Court issued said warrants to said relators, specifying the names of the relators and the amount of the warrant drawn in favor of each.

And that "said warrants were on the 29th day of April, 1884, along with the warrant of the relator Alfred Huidekoper, presented to the treasurer of Macon county and were by him duly registered at 9:55 p. m. and payment refused for the want of funds to pay the same and on the day of May, 1884, said treasurer made return to this court of his proceedings under said writs and showing therein divers and sundry reasons why he should not be compelled to pay said warrants as in said several writs of *mandamus* he was ordered. That afterwards, to wit, on the day of 1884, said relators appeared in this court and filed their several motions to quash said return of said treasurer and order him to pay said warrants. That said matters thus brought in issue were argued and sub-

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Respondents further answering say that the sum now in the hands of said treasurer as aforesaid is the total amount paid into the said treasury since relator's warrant was issued and registered; that for the years 1883, 1884 and 1885 caused to be assessed and levied on all the taxable property of whatsoever kind and description the full sum of one-half of one per cent. for county purposes, and one-twentieth of one per cent. for M. & M. Railroad purposes, which said sums are all respondents are authorized by law to levy,; that the whole of said tax levied for county purposes has not been and *is not sufficient to pay the current and ordinary expenses of said county for said years*, and that no part of the same now in hand can be by law applied to the payment of

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And that "said warrants were on the 29th day of April, 1884, along with the warrant of the relator Alfred Huidekoper, presented to the treasurer of Macon county and were by him duly registered at 9:55 p. m. and payment refused for the want of funds to pay the same and on the day of May, 1884, said treasurer made return to this court of his proceedings under said writs and showing therein divers and sundry reasons why he should not be compelled to pay said warrants as in said several writs of *mandamus* he was ordered. That afterwards, to wit, on the day of 1884, said relators appeared in this court and filed their several motions to quash said return of said treasurer and order him to pay said warrants. That said matters thus brought in issue were argued and sub-

vide for the payment of the interest upon the State debt, approved March 12, 1867, be and the same is hereby amended to read as follows: Section 1. That in pursuance of the requirements of the sixth section of the ordinance of the convention adopted April 8, 1865, there is hereby levied and shall be assessed and collected for the year 1868 a tax of one-fourth of one per cent. on the assessed value of all the real and other property subject to taxation in this State. * * *

G. Laws of 1868, p. 142.

SEC. 2. "That section seventy-six of chapter thirteen, general statutes, be amended to read as follows: The several county courts are empowered to levy such sums as may be annually necessary to defray the expenses of their respective counties by a tax upon all property and licenses made taxable by law for State purposes, except what is herein excepted by this act; but the county tax shall in no case exceed the State revenue on the same subjects of taxation more than one hundred per centum for the same time."

H. Laws of 1869, p. 81.

SEC. 1. "There shall be annually levied, assessed and collected on the assessed value of all the real estate and other property subject by law to taxation in this State one-fourth of one per centum for State revenue and one-fourth of one per centum for the payment of all State indebtedness.

Approved Feburary 16, 1869.

I. Laws of 1872, p. 84. See sections 166 and 167.

Section 165. "The several county courts are empowered to levy such sums as may be annually necessary to defray the expenses of their respective counties by a tax upon all property and licenses made taxable by law for State purposes, except what is herein excepted by this act, but the county tax shall in no case exceed one-half of one per cent. on all taxable property and on all licenses made taxable by law, the county tax shall not exceed the State revenue tax more than one hundred per centum for the same time. * * * * * The State interest tax not to be construed to be State revenue tax."

Approved January 8, 1872.

2 Wagner's Stat., p. 1193, § 165.

J. Constitution of Missouri. 1 Rev. Stat., p. 80, Article X, Sec. 11.

"For county purposes the annual rate on property in counties having six million dollars or less shall not in the aggregate exceed fifty cents on the one hundred dollars valuation, * * * * * said restriction as to rates shall apply to taxes of every kind and description, whether general or special, except taxes to pay valid indebtedness now existing, or bonds which may be issued in renewal of such indebtedness."

K. Laws of 1879, p. 193.

"For county purposes the annual tax on property not including taxes for the payment of valid bonded indebtedness or renewal bonds issued in lieu thereof shall not in any county in the State exceed the rates herein specified. In counties having six million dollars or less said rate shall not exceed fifty cents on the hundred dollars valuation." * * * *

Approved May 31, 1879.

2 Revised Statutes, p. 1337, § 6807.

5. The said county of Macon has an aggregate assessed valuation of less than six million dollars.

6. The following are further statutory provisions of the State of Missouri relative to counties and their power of taxation for the respective purposes named.

General Statutes 1865, p. 290. *Public Roads.*

Sec. 6. "For the purpose of opening and keeping in repair roads, and in order to raise the necessary funds to pay the expenses of any and all said improvements the county courts are hereby empowered and authorized to levy a special tax of three and one-half mills on the dollar of the taxable property of the county on all property taxable by law, said levy to be made at the time and in the same manner as the county revenue is now levied that hereafter all property, whether belonging to non-residents or others subject to pay a State and county tax, shall be made subject to pay road tax, and the collection thereof to be made in the same way and manner as the State and county revenue now is or hereafter may be by law directed to be made and enforced." In effect August 1, 1866.

Laws of 1868, p. 149.

"AN ACT to provide for the opening and repairing of public roads, and to repeal chapter fifty-two of the General Statutes of 1855."

lar term of such court, after the taking effect of this act, and at the May term every year thereafter, to appropriate, apportion and subdivide ALL THE REVENUES collected and to be collected, and moneys received, and to be received, in the various counties of the State, for county purposes, in the following order:

FIRST. A sum sufficient for the payment of all the necessary expenses that may be incurred for the care of paupers and insane persons of such county.

SECOND. A sum sufficient for the payment of all the necessary expenses for the building of bridges and repairing of roads, including the pay of road overseers of such county.

THIRD. A sum sufficient for the payment of the salary of all county officers where the same is, by law, made payable out of the ordinary revenues of the county.

FOURTH. A sum sufficient for the payment of the fees of grand and petit jurors, judges and clerks of election, and fees of witness for the grand jury of the county.

FIFTH. A sum sufficient for the payment of the other ordinary current expenses of the county, not hereinbefore specially provided for, which shall be known and designated as the contingent fund of such county. *Which last sum shall in no case exceed one-fifth of the total revenue of such county for county purposes for any one year.*

SEC. 2. The county courts of the various counties of this State are hereby authorized and empowered, at the first regular term of such court after taking effect of this act, and at the May term every year thereafter, to make an order and cause the same to be spread upon the records of such court, setting apart, appropriating, apportioning and subdividing the revenues of any county for county purposes as the same is set forth and specified in section one of this act, and when the order shall thus be made and spread upon the records of any county in the State, the moneys so set apart, appropriated, apportioned and subdivided shall be held to be a sacred fund for the purposes for which it has been designated; *and the county court thus making the order shall have no power to divert the same or to permit the funds thus set apart to be drawn from the treasury of such county, except by warrants issued by order of such court, on the respective funds so set apart*, and for the purposes in section one of this act specified and set forth: Provided, that nothing in this act shall be so construed as to authorize any county court in this State to make a levy for county purposes greater than that prescribed in section 11, of article 10 of the constitution.

SEC. 3. It shall be the duty of the county treasurer *to separate and subdivide the revenues of such county in his hands and as they come into his hands, in compliance with such order*

of court and the provisions of this act; and it shall be his duty to pay out of revenues thus subdivided, *on warrants* issued by order of the court, *on the respective funds* so set apart and subdivided, *and not otherwise;* and for this purpose the treasurer shall keep *a separate account with the county court of each fund*, which several funds shall be known and designated respectively as the pauper fund, road and bridge fund, fund for the payment of the salary of county officers, fund for the payment of fees of grand and petit jurors, judges and clerks of election, and witnesses for the grand jury and contingent fund; and *no warrant shall be paid out of any fund other than that upon which it has been drawn* by order of the court as aforesaid. Any county treasurer or other county officer who shall fail or refuse to perform the duties required of him or them, under the provisions of this act, and in the express manner provided and directed, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars, and not more than five hundred dollars, and in addition to such punishment his office shall become vacant.

SEC. 4. When a demand against the county is presented to the county court, the usual form of entry may be exemplified thus: A. B. vs. ——— county. The account of A. B. for the sum of ——— dollars being presented and inquired into, it is found by the court that the sum of ——— dollars is due him from the county, payable out of (express the particular fund as the case may require) and for which the clerk is ordered to issue a warrant. When the court shall ascertain any sum of money to be due from the county, they shall order their clerks to issue a warrant therefor in the following form; Treasurer of the county of —— —— pay to ———, ——— dollars, *out of any money in the treasury appropriated for* (express the particular fund as the case may require). Given at the court house, this —— day of ———, 18—, by order of the county court.

A. B.
President.

Attest C. D., Clerk.

SEC. 5. All acts and parts of acts inconsistent with the provisions of this act be and the same are hereby repealed.

SEC. 6. The proper expenditure of the revenues collected for county purposes, their appropriation, apportionment and subdivision for the purposes for which they are levied and collected, and the maintenance of the credit of county governments creates an emergency requiring this act to take effect at once; therefore, this act shall take effect and be in force from and after its passage.

Approved March 19, 1879.

The county of Macon is organized under the statutes of Missouri relative to township organization, found in 2 Revised Statutes, p. 1458 *et seq.*, section 7476 (p. 1464).

"In each township in this State organized under the provisions of this chapter there shall be a board of directors composed of the township trustee and justice of the peace whose duty it shall be * * * third, to levy all taxes for township road and bridge purposes." * * *

SEC. 7481. (Page 1465.) "The money necessary to defray the township charges of each township shall be levied on the taxable property in such township in the manner prescribed in the general revenue law for State and county purposes."

Acts 1881, p. 217, section 7485: "The township board of directors shall make an account of the amount of money necessary to defray township expenses during the next ensuing year; said account shall be made out not more than sixty nor less than twenty days prior to the meeting of the county court at which the assessment for county purposes is made, said account shall be signed by the president of the board and attested by the clerk, and filed with the clerk of the county court, on or before the first day of said court, who shall cause the same to be placed upon the tax book of said township: provided, that said expense shall not, together with the amount levied for road purposes and special bridge tax, exceed in any one year twenty cents on one hundred dollars valuation."

And upon the foregoing pleadings and special findings of fact, the court declares the law to be with the ————, and orders that final order and judgment be entered as follows: (Record, pp. 55—64.)

And it is thereupon ordered, considered and adjudged that a peremptory writ of *mandamus* issue forthwith directed to the respondents, commanding them to pass and enter of record an order *annulling* and *rescinding said order in relator's information mentioned apportioning the said county revenue for the year 1885 into separate and distinct funds*, and further commanding them, the said respondents, *to increase the tax levy* for the year 1885 from thirty cents to fifty cents by a further levy of twenty cents on the hundred dollars for the said year 1885 upon every hundred dollars of valuation of taxable property in Macon county as well as upon all merchants' licenses and other advalorem duties for county revenue, said last mentioned levy to be made forthwith and collected together with the regular annual levies required by law to be made in the present year of 1887, and further to apply the proceeds of such *levy pro rata when and as the same is collected upon and towards the payment of all the said registered warrants of even date and registration with relator's* and issued under and by virtue of *mandamus* proceedings in this court.

And it is further ordered, considered and adjudged by the court that said peremptory writ further command the respondents to pay or *cause to be paid pro rata upon the relator's*

warrant, and the registered warrants of even date and registration therewith, issued under and by virtue of mandamus proceedings in this court, the rest and residue of fourteen thousand four hundred and ninety-three dollars and forty-four cents ($14,493.44) together with any other and further funds accumulated in the county treasury of said Macon county since the 1st day of January, 1886, after paying and discharging with interest the warrant No. 15 in favor of the school fund for seven thousand eight hundred and forty-eight dollars and ninety-nine cents ($7,848.99) of prior registration to the warrant of relator, and said other warrants of even date and registration with relator's.

And it is further ordered that the officers and each of them now holding and exercising the respective offices of the respondents be and are hereby required to return and certify under their respective corporal oaths their obedience to the above stated commands at the adjourned session of this court to be held on the first Monday of September, 1887.

(Signed.) A. KREKEL, *Judge.*

(Record, pp. 54, 55.)

Afterwards on the same day the plaintiffs in error filed a motion for a new trial, assigning the usual reasons, which was overruled the same day and exception duly taken. (Record p. 68.)

And afterwards on the same day the plaintiffs in error filed a motion in arrest of judgment, assigning various grounds for arresting the judgment, which was likewise overruled the same day and an exception duly taken. (Record, p. 69.)

On the 23rd day of May, 1887, a peremptory writ of mandamus was issued in conformity with the judgment. (Record, pp. 70–72.)

On the 15th day of June, 1887, the plaintiffs in error sued out this writ of error, having given a supersedeas bond in the sum of $20,000. (Record, 74.)

ASSIGNMENT OF ERRORS.

On the record in this case the Plaintiffs in Error assign the following errors, viz.: —

First. There is no legal ground alleged in the relator's information for a further alternative writ of *mandamus* against the plaintiffs in error, and the Circuit Court erred in proceeding on said information and rendering judgment in favor of the relator.

Second. The facts stated in the return of the plaintiffs in error to said information not being denied by the relator stood admitted on the record to be true. They showed good legal

reasons why the relator was not entitled to a peremptory writ of *mandamus* as prayed for in said information and said court on said admission should have dismissed said information and rendered judgment in favor of plaintiffs in error.

Third. Said court erred in issuing said peremptory writ of *mandamus*.

Fourth. There is no allegation in said information that the Treasurer of Macon county had refused or failed to perform any legal duty which he owed the relator, and said information shows no necessity for the issue of a peremptory writ of *mandamus* to compel said Treasurer to perform his duty in the premises, and said court erred in issuing said peremptory writ of *mandamus* against him.

Fifth. The Treasurer of Macon county was improperly joined with the judges of the county court of said county in said information, and the proceedings thereon, and said court erred in proceeding thereon and rendering a joint judgment against said treasurer and said judges.

QUESTIONS PRESENTED.

The questions presented by the record are: —

First. Was there any legal ground alleged in the relator's information for a further alternative writ of *mandamus* against plaintiffs in error?

Second. Did the plaintiffs in error show good legal reasons in their return to said information why the relator was not entitled to a peremptory writ of *mandamus*, as prayed for in said information?

Third. Did said circuit court have jurisdiction and authority to render a judgment annulling and rescinding the order of Macon county court, made in April, 1884, levying a tax of 30 cents on the $100 valuation on all property in Macon county to pay the current expenses of Macon county for said year; and also to annul and rescind the order of Macon county court subdividing the money arising from the collection of said tax as required by the statutes of the State of Missouri in such cases made and provided, and to command Macon county court to levy a tax of 50 cents on the $100 valuation on all property taxable by law for county purposes and when collected that the excess, after paying the warrant in favor of the school fund, be applied towards paying the relator's and other judgments rendered against Macon county on bonds issued by Macon county to the Missouri and Mississippi Railroad under the charter of said Company?

Plaintiffs in error aver that there was no legal ground alleged in the relator's information for a further alternative writ

of *mandamus* against them. Plaintiffs in error further aver that in their return to said information they did show good legal reasons why the relator was not entitled to a peremptory writ of *mandamus* as prayed for against them.

And they further aver that the Circuit Court had no jurisdiction and authority to render a judgment annulling and rescinding the order of Macon county court made in April, 1884, levying a tax of 30 cents on the $100 valuation on all property in Macon county to pay the current expenses of Macon county for said year; and also to annul and rescind the order of Macon county court subdividing the money arising from the collection of said tax as required by the statute of the State of Missouri in such cases made and provided, and to command Macon county court to levy a tax of 50 cents on the $100 valuation on said property for county purposes, and when collected that the excess, after paying the warrant in favor of the school fund, be applied towards paying the relator's and other judgments rendered against Macon county on bonds issued by Macon county to the Missouri and Mississippi Railroad Company.

BRIEF.

The Plaintiffs in Error make the following points and cite the following authorities in support of the foregoing propositions:—

I. There was no legal ground alleged in the relator's information for a further alternative writ of mandamus.

II. The facts cited in the return made by plaintiffs in said information, are not denied, consequently they stand admitted in the record to be true.

Harshman *v.* Knox County Court, 122 U. S.

The facts stated in said return show good legal reasons why the relator is not entitled to a peremptory writ of mandamus as prayed for in said information.

United States *v.* County of Clark, 95 U. S. 769.

III. The Circuit court had no jurisdiction and authority to render a judgment annulling and rescinding the order of Macon County court levying the tax in question and it had no jurisdiction and authority to annul and rescind the order of Macon County court subdividing the money arising from the collections of such tax as required by the statutes of the State of Missouri, and it had no jurisdiction and authority to command Macon County Court to levy a tax of 50 cents on the $100 valuation of the property taxable for county purposes in Macon County, and when collected that the excess, after paying the warrant in favor of the school fund, be applied towards paying the relator's and other judgments rendered against Macon county on bonds of the same tenor as the relator's bonds.

The contract under which the bonds were issued only entitled the holders of the bonds to the levy of a special tax of 1-26 of one per cent. in each year. The return made to the original writ of *mandamus* in this case shows that the County Court of Macon county has annually made said levy and had the tax collected and applied towards the payment of the bonds issued to the Missouri and Mississippi Railroad Company. (Record p. —). In doing this the County Court performed its whole duty. The relator is not entitled to the levy of any other tax.

United States *v.* County of Macon, 99 U. S. 582;
United States *v.* County of Clark, 95 *Id.* 769;
State *ex rel. v.* Macon County Court, 68 Mo. 29;
State *ex rel. v.* Shortridge, 56 *Id.* 126.

The levy of a tax not exceeding 50 cents on the $100 valuation to pay the current expenses of Macon county is a *trust fund* appropriated and set apart for the express purpose of defraying the expenses of carrying on and administering the government in the county. The relator has no claim on this fund. It would be gross breach of trust to take this fund or any part thereof and apply it to the payment of the relator's judgment, or any other judgment on Missouri and Mississippi Railroad Company bonds.

Harshman *v.* Winerbottom, 123 *Id.* 215;
Clay County *v.* McAleer, 115 *Id.* 616;
East St. Louis *v.* Zebley, 110 *Id.* 321;
Grant *v.* Davenport, 36 Iowa, 401;

Coffin *v.* Same, 26 *Id.* 515;
French *v.* Burlington, 42 *Id.* 618;
Com. *v.* Commissioners, 6 Binney, 5;
Com. *v.* Comrs. of Philadelphia, 1 Whart. 1;
Edgerton *v.* Municipality, 1 La. An. 435;
Dobbins *v.* Erie, 16 Pet. 435.

The relator has got all he is entitled to under the contract. He has no right to have a *trust* fund appropriated and applied to the payment of his judgment. All the courts in the State of Missouri from the county court to the Supreme Court of the State have passed on this question, and they have all decided that the relator has no right to any portion of the tax levied under the general statutes to pay the current expenses of Macon county.

State *v.* Shortridge, 56 Mo. 126;
State *v.* Macon County Court, 68 *Id.* 29.

The return shows that the county court levied the maximum amount of tax which it is authorized to levy under the Constitution and Statutes of the State; this return was not contradicted. Hence it should have ended this proceeding.

But if it be claimed that as a matter of fact the county court only levied 30 cents on the $100 valuation and that the county is not entitled to have the 20 cents levied by the Township board, then we say that the Townships are only political subdivisions of the county. That the county would have had to pay for the bridges, roads, etc., which the townships pay for under the township organization, if the county were not under township organization; and that in legal effect when the townships pay for bridges, roads, etc., it is the same as the county paying for them, and whether these things are paid for by a tax levied by the township board or the County Court it makes no difference as they are legitimate county expenses, and have been ever since the organization of the State government.

Under the Constitution of the State of Missouri *county courts* are a part of the *judiciary* of the State, and jurisdic-

tion is conferred on them "to transact all county and such other business as may be prescribed by law."

§ 36, Article VI., Rev. Stats. 1879 LXXIII;
Ex Parte Newman, 14 Wall. 152;
U. S. *v.* County of Clark, 95 U. S. 769.

The amount of tax to be levied by the County Court to pay the current expenses of the county is a purely *judicial* question; and the Circuit Court of the United States has no jurisdiction or authority to amend or rescind the order of Macon County Court, fixing the amount of said tax.

It is respectfully submitted that the judgment rendered by the Circuit Court is erroneous and it should be reversed and the proceeding dismissed.

JAMES CARR,
OF COUNSEL FOR PLAINTIFFS IN ERROR

FILED
JAN 17 1890
JAMES H. McKENNEY,
CLERK

Supreme Court of the United States.

October Term, 1889.

MACON COUNTY COURT AND THE JUSTICES THEREOF, *Plaintiffs in Error*

vs.

THE UNITED STATES *ex rel.* ALFRED HUIDEKOPER.

No. 615.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN (NOW CENTRAL) DIVISION OF THE WESTERN DISTRICT OF MISSOURI.

Supplemental Brief and Reply to the Brief Filed for Relator.

JAMES CARR AND
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IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN (NOW CENTRAL) DIVISION OF THE WESTERN DISTRICT OF MISSOURI.

Plaintiffs in Error Make the Following Points and Cite the Following Authorities by Way of Supplemental Brief and Reply to the Brief Filed for Relator:

The County Court of Macon County was established under and in pursuance of the following provision of the constitution of the State of Missouri, viz:

"Inferior tribunals, to be known as *county courts*, shall be established in each county, for the transaction of all county business."

§ 23, Art. VI., Gen. Stats. 1865, p. 38; Chap. 137, p. 555, Gen. Stats., 1865.

The contract in question was made while this constitution and these statutes were in force.

The constitution was revised in 1875. It has nearly the same words, in regard to county courts, as the constitution of 1865. The jurisdiction is the same.

§ 36, Article VI., LXXIII. Rev. Stats., 1879; Art. VI., Chapter 23, p. 212, *Ibid.*

The County Court of Macon County was, at the time of the contract, part of the *judiciary* of the State of Missouri. To it was and still is confided the duty of ascertaining "the amount [of revenue] to be raised for county purposes, and fixing the rates of county taxes," as follows:

"COUNTY REVENUE.

"*Acts* 1868, p. 142. [§] 76. The several county courts are empowered to levy such sums as may be annually necessary to defray the expenses of their respective counties by a tax upon all property and licenses made taxable by law for State purposes, except what is herein excepted by this act; but the county tax shall in no case exceed the State revenue tax on the same subjects of taxation more than one hundred per centum for the same time; but the county of court of St. Louis is * * * *

"*G. S. ch.* 13, § 77. **77.** As soon as may be after the assessor's book of each county shall be corrected

and adjusted according to law, the county court shall ascertain the sum necessary to be raised for county purposes, and fix the rates of taxes on the several subjects of taxation so as to raise the required sum, and the same to be entered in proper columns in the tax book."

"*Ibid*, § 78—**78.** Whenever the county court shall ascertain the amount to be raised for county purposes, and fix the rates of county taxes, they shall cause the same to be entered of record, so as to show the whole amount to be raised, and the proportion which the rates of the county tax bear to the rates of State tax on the same subject of taxation; and every collector (except the collector of St. Louis) shall pay over monthly into the county treasury such sums as he may collect of the county revenue; and the county treasurer shall give him duplicate receipts therefor, one of which he shall deliver to the county clerk, who shall file the same in his office, and shall charge the treasurer and credit the collector therewith; and the collector shall make settlement with the county court for county revenue at the same time that he is required to settle for State taxes."

"*Ibid*, § 79—**79.** Every collector of the revenue, having made settlement according to law, of county revenue by him collected or received, shall forthwith pay the amount found due into the county treasury, and the treasurer shall give him duplicate receipts therefor, one of which shall be filed in the office of the clerk of the county court, who shall grant him a full quietus under the seal of the court."

2 Wagner's stats., 1870, pp. 1196 and 1197.

Thus, it will be seen, that the county court of Macon County in levying the county tax or tax for county revenue had to exercise *judgment and discretion* in ascertaining the amount of tax to be levied; but in making the levy it was limited by the following words, viz: "But the county tax shall in no case exceed the *State revenue* tax on the same subjects of taxation more than *one hundred* per centum for the same time."

§ 76, *supra*; original brief, pp. 9, 10.

The county court of Macon County had plenary jurisdiction over the subject-matter of levying a tax for county revenue purposes, and it is the only tribunal under the Constitution and laws of the State of Missouri, that had jurisdiction. It exercises its *judgment* and *discretion* in the premises. Its order levying thirty cents on one hundred dollars valuation, is like the judgment of any other court having jurisdiction. It is a finality. There is no mode provided for reviewing it. Even if it were reviewable, it cannot be reviewed on a writ of *mandamus*. A writ of mandamus cannot perform the functions of a writ of error or an appeal.

Ex parte Loring, 94 U. S., 418;
Ex parte Hoard, 105 U. S., 578;
Ex parte Ferry Co., 104 Id., 519;
Ex parte Milwaukee R. R. Co., 5 Wall., 188.

If the United States circuit court has authority to compel the county court of Macon County to make an additional levy of twenty cents on the one hundred dollars valuation, then its judgment is *substituted* for the judgment of the county court of

Macon County, the only tribunal to which the Constitution and statutes of Missouri confide this very important and delicate duty. This is not only in direct contravention of the Constitution and statutes of the State of Missouri; but it is in violation of that comity which one court shows to the judgments and orders of another court, even in cases of concurrent jurisdiction.

State ex rel. vs. *Bourn*, 75 Mo., 473;
Parmley vs. *R. R. Cos.*, 3 Dillon, 25;
State R. R. Tax cases, 92 U. S., p. 614.

"One of the reasons why a court should not interfere, as it would in a transaction between individuals, is, that it has no power to apportion the tax or to make a new assessment, or to direct another to be made by the proper officers of the State. These officers, and the manner in which they exercise their functions, are wholly beyond the power of the court when so acting. The levy of taxes is not a judicial function. Its exercise by the constitution of all the States and by the theory of our English origin is exclusively legislative."

Heine vs. *The Levee Commissioners*, 19 Wall., 660.

The relator has no lawful claim on the ordinary revenue fund of Macon County, and unless he had a vested or specific right to said fund, he could not be entitled to a writ of mandamus.

Supervisers vs. *United States*, 18 Wallace, 77.

"It is very plain that a mandamus will not be awarded to compel County officers of a State to do

any act which they are not authorized to do by the laws of the State, from which they derive their powers. Such officers are the creatures of the statute law, brought into existence for public purposes, and having no authority beyond that conferred upon them by the author of their being. And it may be observed that the office of a writ of mandamus is not to create duties, but to compel the discharge of those already existing. A relator must always have a clear right to the performance of a duty resting on the defendant before the writ can be invoked. Is it, then, the duty of the Board of Supervisors of a County in the State of Iowa to levy a special tax, in addition to a county tax of four mills upon the dollar, to satisfy a judgment recovered against the County for its ordinary indebtedness? The question can be answered only by reference to the statutes of the State. * * *

"It follows that, in our judgment, the return to the alternative mandamus was a sufficient return. That the respondents had no power to levy the special tax called for, and as a writ of mandamus can compel the performance only of some act which the law authorizes, that the demurrer to the return should not have been sustained."

The maximum amount that the county court of Macon County was authorized to levy for county revenue, at the time the contract in question was made, was fifty cents on the one hundred dollars' valuation. If it be held that the relator has any claim on this fund then it is affirmed that the levy of twenty cents on the one hundred dollars' valuation to pay for making and keeping roads and bridges in repair in the respective townships in Macon Coun-

ty added to the thirty cents levied by the county court make the *whole* amount that the county court has authority, under any circumstances, to levy for the reason that under the statutes of the State of Missouri, from the organization of the State government down to date, making and repairing roads and bridges was and is a legitimate county expense.

State ex rel. vs. *Bourn*, 75 Mo., 473;
State vs. *Macon County Court*, 68 Mo., 29.

The county is a political subdivision of the State, and its county court is a part of the State government.

Reardon vs. *St. Louis County*, 36 Mo., 561;
St. Louis Police Commissioners vs. *County Court*, 34 Mo., 546;
Ray County vs. *Bentley*, 49 Mo., 236;
Ralls County Court vs. *United States*, 105 U. S., 733.

A township is a political subdivision of the county.

State ex rel. vs. *Linn County Court*, 44 Mo., 510;
State vs. *Clarkson*, 59 *id.*, 153.

The township organization in Macon County simply relieves the county from making and keeping in repair the roads and bridges in the respective townships. If there were no township organization in the county then the county would have to do this. The townships do nothing the county would not have to do if there were no township organization.

The following are the provisions in the constitution and statutes of Missouri in regard to township or-

ganization, material to the question under consideration, viz:

The Constitution of 1875 for Missouri, at Art. IX, Section 8, provides that —

"Sec. 8. The General Assembly may provide, by general law, for township organization, under which any county may organize whenever a majority of the legal voters of such county, voting at any general election, shall so determine; and whenever any county shall adopt township organization, so much of this Constitution as provides for the management of county affairs, and the assessment and collection of the revenue by county officers, in conflict with such general law for township organization, may be dispensed with, and the business of said county, and the local concerns of the several townships therein, may be transacted in such manner as may be prescribed by law: *Provided*, That the justices of the county court in such case shall not exceed three in number," pages LXXVI, *et seq.*, R. S. of Missouri, 1879.

The township organization law simply provides that township boards shall make out an *account* of *money* necessary to be levied for them by the *county court* for expenses of next ensuing year.

Section 7485. Laws of Missouri, Acts of 1881, page 217: "The township board of directors shall make out an account of the amount of money necessary to defray the township expenses during the next ensuing year; said account shall be made out not more than sixty or less than twenty days prior to the

meeting of the county court at which the assessment for county purposes is made; said account shall be signed by the president of the board, and attested by the clerk, and filed with the clerk of the county court on or before the first day of said court, who shall cause the same to be placed upon the tax books of said township: *Provided*, That said expenses shall not together with the amount levied for road purposes and special bridge tax, exceed in any one year twenty cents on the one hundred dollars."

(Record, p. .)

The 13th section of the charter of the Missouri and Mississippi Railroad Company was construed by the supreme court of Missouri in the case of the *State ex rel. The Missouri and Mississippi Railroad Company* vs. *Macon County Court* (41 Mo., 453); and in that case the supreme court of Missouri held that the county court of Macon County had plenary power under such section to subscribe, without the assent of two thirds of the qualified voters of Macon County, to the capital stock of the Missouri and Mississippi Railroad Company. That as the charter of said company was granted on the 20th day of February, 1865, when there was no constitutional restriction requiring the assent of the qualified voters of the county as a condition precedent to the right of the county court to subscribe, the 14th section of article XI of the constitution of Missouri, which went into operation on the 4th day of July, 1865, requiring as a condition precedent to the right of the county court to subscribe that "two-thirds of the qualified voters of such county, city or town, at a regular or special election to be held therein, shall

assent thereto," did not modify or in any way affect the right of the county court to subscribe under the charter. That the constitution looked entirely to the future; its language being: "The general assembly *shall* not authorize any county, city or town to become a stockholder in, or loan its credit to, any company, association or corporation, unless two-thirds of the qualified voters of such county, city or town, at a regular or special election to be held therein, shall assent thereto." That as the charter antedated the constitution, the constitution had no effect on it. This construction placed upon the 13th section of the charter of the Missouri and Mississippi Railroad Company has been followed by this court.

County of Macon vs. *Shores*, 97 U. S., 272;
County of Henry vs. *Nicolay*, 95 *id.*, 619;
County of Callaway vs. *Foster*, 93 *id.*, 567;
County of Scotland vs. *Thomas*, 94 *id.*, 682.

It follows that the county court of Macon County had full power to subscribe to the capital stock of the Missouri and Mississippi Railroad Company under the 13th section of its charter, without the assent of two-thirds of the qualified voters, and to issue bonds in payment of the subscription. As the subscription was made and the bonds issued under and by authority of the charter alone one must look to it and ascertain what means it has provided for the payment of the bonds; and we find the 13th section of the charter has expressly provided that "the county court of any county * * * may issue bonds therefor, and levy a tax to pay the same not exceeding one-twentieth of 1 per cent. upon the assessed value of the taxable property for each year."

Says Chief Justice WAITE, in delivering the opinion of this Court in the case of *United States ex rel. Alfred Huidekoper* vs. *Macon County* (99 U. S., on p. 590):

"If there had been nothing in the act to the contrary, it might, perhaps, have been fairly inferred that it was the intention of the Legislature to grant full power to tax for the payment of the extra ordinary debt authorized to an amount sufficient to meet both principal and interest at maturity. This implication is, however, repelled by the special provision for the tax of one-twentieth of one per cent., and the case is thus brought directly within the maxim, *expressio unius est exclusio alcenus.*"

"Every purchaser of a municipal bond is chargeable with notice of the statute under which the bond was issued. If the statute gives no power to make the bond, the municipality is not bound. So, too, if the municipality has no power, either by express grant or by implication, to raise money by taxation to pay the bond, *the holder cannot require the municipal authorities to levy a tax for that purpose.* If the purchaser in this case had examined the statutes under which the County was acting, he would have seen what might prove to be difficulties in the way of payment. As it is, he holds the obligation of a debtor who is unable to provide the means of payment. We have no power by *mandamus* to compel a municipal corporation to pay a tax which the law does not authorize. We cannot create new rights or confer new powers. All we can do is to bring existing powers into operation. In this case it appears that the special tax of one-twentieth of one per cent. has been regularly levied, collected and applied, and no complaint is made as to the levy of the one-half of one per cent. for general purposes. What is wanted is the levy beyond these amounts, and that, we think, under existing laws, we have no power to order."

This court follows the decisions of the highest court of a State construing its own constitution and statutes.

Warren vs. *Leffingwell*, 2 Black., 599;
Supervisors vs. *United States*, 18 Wall., 71.

The Supreme Court of Missouri has decided twice that the parties standing in the same category as the relator are not entitled to the levy of any other or further tax than the one-half of one per cent.

State vs. *Shortridge*, 56 Mo., 126;
State vs. *Macon County Court*, 68 Id., 29.

And in the case of *State* vs. *Macon County Court* it held that they had no claim on the fund arising from the one-half of one per cent., *i. e.*, the ordinary revenue fund of the county.

This court has twice followed the decisions of the Supreme Court of Missouri on this subject.

United States vs. *County of Macon*, 99 U. S., 582;
United States vs. *County of Clark*, 95 Id., 769.

The relator is seeking in this case to do *indirectly* what the Supreme Court of Missouri has twice decided he cannot do *directly*, and what this court has twice decided he cannot do *directly*.

Jarrolt vs. *Moberly*, 103 U. S., 580;
Findlay vs. *McAllister*, 113 Id., 110.

The circuit court erred in annulling and rescinding the order of Macon County Court sub-dividing the revenue of the county. This order was made in compliance with a duty imposed on it by the statute of the State in such cases made and provided. The

county is a political sub division of the State, and the county revenue was and is under the control of the State. It had a perfect legal right to sub-divide the revenue of the county in the manner the statute required it to be done, and no one had or has any legal right to challenge or gainsay it.

Sec. 6818, 2 Vol., Rev. Stats., 1879, p. 1339, pp. 13, 14, 15, Original Brief.

The Circuit court erred in commanding the county not only to levy the tax of twenty cents on the 100 dollars, but to collect said tax. Neither the county court nor the judges thereof is or are charged with the duty of collecting said tax, and they have no lawful right to collect it. The law devolves that duty on the collector.

Ex-Parte Rowland, 104 U. S., 604;

2. Vol. R. S. of Missouri, 1879, Secs. 6732 and 6733.

State Railroad Tax Cases, 92 U. S., 570.

The circuit court erred in commanding the judges of Macon County court to pay or caused to be paid, *pro rata*, upon the relator's warrant and the registered warrants, of even date and registration therewith, for the following reasons, viz:

First. The judges of Macon County Court are not the legal custodians of the county money. The treasure is:

Article IV., Chap. 95, Rev. Stats., 1879.

Second. This being a proceeding *at law*, the circuit court had no authority to *marshal* the money arising from the levy.

City of Galena vs. *Amy*, 5 Wall., 705.

Third. The return shows that there were outstanding and unpaid warrants issued for the ordinary current expenses of Macon County for the years 1883, 1884 and 1885, far in excess of the sum in hand, *i. e.*, $14,394.44, and the circuit court erred in commanding the judges and county treasurer to pay out the remainder of said sum after paying the school warrant, contrary to the statute of the State of Missouri in such cases made and provided. The relator's judgment is not an ordinary current expense of the county. It is an extraordinary debt.

The relator's warrant was drawn on "the general funds of said county" (Macon County). "The general funds" of Macon County was a myth. From the organization of the State government down to the day the warrant was drawn, there never had been such a thing known as "the general funds of a county." No act of the General Assembly ever characterized the county revenue by any such name. No county court ever so characterized it in any order made in regard to the county revenue; and the people of the State never characterized it by that name when speaking of the revenues of the county. Macon County never had such a fund. The drawing of a warrant on "the general funds" of Macon County in favor of the relator was about as effective in getting money out of the treasury of Macon County as the Pope's bull was in stopping the comet.

The fact is that the law left it entirely to the *judgment* and *discretion* of the county courts to ascertain the sums necessary to be levied "to defray" what was denominated by the statute, when the contract in question was made, "the expenses of their respective counties," and then to levy that amount,

provided, however, that "the county tax shall in no case exceed the *State revenue* on the same subjects of taxation more than one hundred per centum for the same time." (§ 76, 2 Vol., Wagner Stats., 1870, p. 1196; same, sec. 2, p. 10 of original brief). And the amount of tax which could be levied for "State revenue," when said contract was made, was "one-fourth of one per centum." (§ 10, Wagner's Stats., 1870, p. 1161; same, section 1, p. 10 of original brief.) Thus making one-half of one per cent. the maximum amount that the county courts were authorized to levy "to defray the expenses of their respective counties."

The money thus derived was levied, assessed, and collected for a specific purpose, *i. e.*, to defray the expenses of administering the government in the county. This money was under the exclusive jurisdiction and control of the county court of each county. The statutes made it the duty of the county court to appropriate what was necessary to support the paupers and insane poor of the county; to appropriate what was necessary for building and repairing bridges and roads; to appropriate what was necessary to pay the salaries of county officers, or such part as the county was bound to pay (the assessor, county clerk, and county collector were severally paid out of the State Treasury for services rendered by them respectively in assessing, making out a certified copy of the tax book, and collecting the State's part of the revenue); to appropriate what was necessary for the payment of the fees of grand and petit jurors, judges, and clerks of election, and fees of witnesses for the grand jury of the county, and many other expenses which were legitimately incur-

red in administering the government in the county. These things were all provided for in the general statutes of the State, when the contract, under which the relator claims his right, was made. There is nothing new about them. They were recognized as legitimate on the body politic by the *wittenagemote* of the Saxons; and later on by the British constitution. Our Anglo-Saxon ancestors imported their ideas from England, and have incorporated them into the statutes of all the States. They do credit to their humanity, and are in full accord with the benevolent spirit and civilization of the age.

Government cannot be carried on without money any more than an individual can live in a civilized society without money. The expenses mentioned are the current expenses of a county. They are legitimate expenses. The relator seeks by his mandamus, to coerce the county court and the county treasurer to divert the money in the county treasury which had been levied, assessed and collected to defray these legitimate county expenses and to apply it "*pro rata* with the other warrants" in favor of other relators towards the payment of his warrant. But he does not stop when he thus coerces all the money out of the county treasury, and leaves it bankrupt. His judgment reads: "it is thereupon ordered, considered and adjudged that a peremptory writ of mandamus issue forthwith directed to the respondents, commanding them * * * * forthwith to apply the proceeds of such levy *pro rata* when and as the same is collected upon and towards the payment of all the said registered warrants of even date and registration with relators and issued

under and by virtue of *mandamus* proceedings in this court."

This not only takes all the money in the county treasury, and bankrupts it for the time being, to pay what is denominated by Chief Justice WAITE, in the case of *Ralls County* vs. *United States*, (105 U. S., p. 736), "a new and extraordinary obligation," but they are also to pay to the relator and other M. and M. Railroad bond creditors "any other and further funds accumulated in the county treasury of said Macon county since the 1st day of January, 1886, after paying and discharging" the school fund warrant.

What is to become of Macon county with such a judgment and peremptory writ of mandamus overhanging it, and ignoring all the just obligations resting on it as a subdivision of the State, and overriding the constitution and statutes of the State? Will it not paralyze the government in the county? What will prevent paralysis from setting in when its revenue is withdrawn from its treasury? No government, national, State, or county can live without revenue.

The county court of Macon county has annually levied a special tax 1-20 of one per cent., and it has been collected and paid over to persons who have judgments against Macon county on M. and M. bonds. This court has decided twice, following the the Supreme Court of Missouri, that that is a full performance of the contract on the part of Macon county, and that the testator is not entitled to the levy of any other or further tax. Will this court allow him to take the revenue of the county upon

which there are legitimate claims paramount to the relator's, and let those claims go unpaid, and thereby do by indirection what he cannot do directly?

The bonds recite on their face that they were issued under and pursuant to an order of Macon County Court "as authorized by an act entitled 'An Act to incorporate the Missouri and Mississippi Railroad Company, approved February the 29th, 1865." Under that act the county is only authorized to levy a tax of 1-20 of one per cent. in each year. The assessor's book is required to be filed in the county clerk's office. It shows the precise amount of property subject to taxation (Sec. 42, p. 1173, 2 Wagner's Stats., 1870). The county clerk is required by law to file an abstract of the taxable property of the county in the State auditor's office (Sec. 42, p. 1173, 2 Wagner's Statutes 1870). Now, if the relator had examined the tax book in the county clerk's office, or the abstract in the State auditor's office, he could have ascertained to a mathematical certainty the amount of tax which the authorized levy of one-twentieth of one per cent. would produce in a year.

This is what Chief Justice WAITE refers to when he says, in delivering the opinion of this court, in the case of *United States* vs. *County of Macon* (99 U. S., on p. 590). "If the purchaser in this case had examined the statutes under which the county was acting, he would have seen what might prove to be difficulties in the way of payment. As it is, he holds the obligation of a debtor who is unable to provide the means of payment. We have no power by *mandamus* to compel a municipal corporation to

levy a tax which the law does not authorize. We cannot create new rights or confer new powers."

There is no order for an alternative writ of mandamus in this case. An order of this kind is jurisdictional.

After the information for a further alternative writ of mandamus was filed against the county court, then, on motion of the relator, the county court and county treasurer are required "to make and file full returns and statements under oath relative to the administration of the county revenue of Macon County since the first day of January, 1884, to the date of filing" (Original Brief, p. 3). And three days after the case had been submitted, the court, in vacation, on its own motion, treating this proceeding by *mandamus* as a suit in *equity* made an order for the clerk to ascertain the number, and amount of judgments against Macon County on bonds issued to the Missouri and Mississippi Railroad Company, with a view to marshalling the assets of Macon County.

The county treasurer is no where shown to be in default, *i. e.*, to have refused or failed to perform any legal duty which he owed the relator; and he was and is improperly joined with the county court in this proceeding.

Ex-Parte Rowland, 104 U. S. 606;
C., D. and M. R. R. Co. vs. *Olmstead*, 46 Io., 316.

What right had the circuit court to annul and rescind the order of Macon County Court, sub-dividing the county revenue? The relator had no legal claim on it.

The levying and collecting of the State revenue is a prerogative of the State in its sovereign capacity. A county is a political sub-division of the State, which in its wisdom, it has established as an auxiliary to the State in administering the government. Among other things the State has confided to the county courts of the counties the prerogative to levy a tax not exceeding one-half of 1 per cent. to pay the expenses of administering the government in the counties. The law, at the time the contract in question was made, prescribes to what persons and objects the county courts shall appropriate and pay out the county revenue when collected. This county revenue is levied, assessed, and collected, and disbursed under the laws of the State. What right has a United States court to interfere with the disposition of the revenue of a county as was done by the judgment in this case, simply because the county, in its capacity of a *private* corporation, owes a debt and has no means of paying it? The judgment in this case not only absolutely nullifies the order of Macon County court subdividing the county revenue required by the statutes of the State, but it *commands* the county court and the county treasurer to divert the revenue in the county treasury from its legitimate governmental purpose and to apply it to the payment of an "extraordinary obligation" of Macon County, in direct contravention of the constitution and statutes of the State. If such an imperial rescript as this is to be held valid, then farewell to the prerogatives of State sovereignty.

The whole proceeding from the inception to the issue of the peremptory writ of mandamus is a tissue of errors and irregularities.

It is respectfully submitted that the judgment of the circuit court ought to be reversed, the peremptory writ of mandamus recalled, and the proceeding dismissed.

JAMES CARR, AND
ROBERT G. MITCHELL,
For Plaintiffs in Error.

Office Supreme Court U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES

No. 615, OCTOBER TERM, 1889.

Advanced for Hearing on Second Monday of January, 1890.

THE COUNTY OF MACON, the Justices thereof, and the Treasurer of said County, Respondents,

Plaintiffs in Error.

VERSUS

ALFRED HUIDEKOPER.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE CENTRAL DIVISION OF THE WESTERN DISTRICT OF MISSOURI.

STATEMENT, BRIEF and ARGUMENT

OF DEFENDANT IN ERROR.

JOSEPH SHIPPEN,
Attorney for Defendant in Error.

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OF DEFENDANT IN ERROR.

STATEMENT.

In Macon [not Mason] County Court vs. Alfred Huidekoper, 109 U. S. 229, following

United States vs. County of Clark, 96 U. S. 211, and

United States vs. County of Macon, 99 U. S. 59;

this case has been heretofore (November 13, 1883) decided on its merits. The only questions raised by the present record are subsidiary in the process of enforcing payment on the warrant obtained by virtue of that decision by this Court.

The history of the case was that Huidekoper recovered in the U. S. Circuit Court for the Eastern Division of the Western District of

Missouri a judgment against Macon County for $28,032 and costs, on the 20th of November, 1879, upon interest coupons of bonds dated and issued May 2, 1870, under authority of the 13th section of the charter of the Missouri & Mississippi Railroad Co., approved Feb. 20, 1865.

Thereupon he instituted mandamus proceedings to enforce the payment thereof by the County pursuant to the principles previously adjudicated by this Court in above mentioned cases.

The relator's demurrer to respondents' return having been sustained and a peremptory writ ordered, the case was brought here by a writ of error, was fully argued with four other cases and decided upon its merits against the respondents and in favor of the relator who is now again in this Court as defendant in error. This is fully shown by the records and files of this case when formerly in this Court; and those proceedings are fully set forth in the present transcript. Pursuant to the mandate of this Court [Printed Record, p. 19] and the peremptory mandamus of the U. S. Circuit Court, the respondents issued its warrant on the general funds of Macon County, and the further proceedings taken to reap the benefit of the decision of this Court and enforce the payment of said warrant is all that is now before this Court.

Any present argument of error must relate to the legal correctness of the order and judgment of the Court below, made April 23, 1887, found in the printed record on page 54, and this was based on the following proceedings of record, viz:

	DATE.	PAGE.
Mandate of U. S. Supreme Court,	March 4, 1884.	19
Peremptory writ of mandamus,	March 4, 1884.	20
Amended return thereto, showing obedience by the issue of a warrant on the general fund as commanded,	April 30, 1884.	25
Information for further mandamus,	Sept. 9, 1885.	27
Amended return (with 3 exhibits),	Nov. 21, 1885.	32
Motion for order to pay over fund in Macon County Treasury,	March 3, 1886.	49
Answer to same,	Sept. 22, 1886.	50
Amended answer,	Oct. 25, 1886.	52
Special finding of facts by the Court below,	April 23, 1887.	55

By the return of obedience, filed April 30, 1884 (page 25), it is shown that the respondents issued to the relator a warrant in the following form:

"The Treasurer of the County of Macon, Missouri, will pay to Alfred Huidekoper, thirty five thousand six hundred and seventy seven and 47-100 dollars, out of the general funds of said county, in payment of a judgment rendered in the United States Circuit Court vs. Macon County, on coupons of bonds issued to the M. & M. Railroad Company. Given at the court house, this 28th day of April, 1884."

This general warrant so obtained by the relator and defendant in error, by the express judgment of this Court remains wholly unpaid, [No. 1 of the finding of facts, page 55], and forms the basis of the subsequent proceedings to enforce payment thereof.

By the respondents' return, filed November 21, 1885, by Exhibit A, page 32, it is shown that the County Court of Macon County ordered that the levy for county purposes for taxes of the year 1885, to be levied upon every $100 of valuation, be for "Connty Fund 30 cents."

And by Exhibit C, page 36 of said return, it is shown that the said county Court ordered that the county revenue levied and collected for the year 1885 should be

"Apportioned and subdivided, as contemplated under and by virtue of section 6819 of the Revised Statutes of Missouri, at page 1339, as follows:
To the Salary Fund, 1-3 of said Revenue.
To the Contingent Fund, 1-5 of said Revenue.
To the Poor House Fund, 1-5 of said Revenue.
To the Road and Bridge Fund, 1-6 of said Revenue.
To the Jury and Election Fund, balance of said Revenue.
And that he certify this order to the Treasurer."

And by the return filed February 24, 1886, page 37 (*vide* page 45), it is shown that there was in the County Treasury:

"Balance on hand January 1, 1886, $14,394 44."

The substance of the order made by the Court below, April 23, 1887, page 54, here now sought to be attacked is as follows:

"The Court finds the issues for the relator, and that there are other warrants in favor of other claimants, some of whom are relators in other mandamus proceedings pending in this Court, issued against the said general funds of Macon County, and of even date and registration, which, with relator's warrant, amount to one hundred and seventy-six thusand two hundred and ninety dollars and forty cents ($176,290.40); and it thereupon ordered, considered and adjudged that a peremptory mandamus issue forthwith directed to the respondents, commanding them to pass and enter of record an order annulling and rescinding said order in relator's information mentioned apportioning the said County revenue for the year 1885 into separate and distinct funds, and further commanding them, the said respondents, to increase the tax levy for the year 1885 from thirty to fifty cents by a further levy of twenty cents on the hundred dollars of valuation of taxable property in Macon County as well as upon all merchants' licenses and other *ad valorem* duties for County revenue, said last mentioned levy to be made forthwith and collected, together with the regular annual levies required by law to be made in the present year of 1887, and further to apply the proceeds of such levy *pro rata* when and as the same is collected upon and towards the payment of all the said registered warrants of even date and registration with relator's, and issued under and by virtue of mandamus proceedings in this Court.

"And it is further ordered, considered and adjudged by the Court, that said peremptory writ further command the respondents to pay or cause to be

paid *pro rata* upon the relator's warrant, and the registered warrants of even date and registration therewith, issued under and by virtue of the mandamus proceeding, in this Court, the rest and residue of fourteen thousand three hundred and ninety-four dollars and forty-four cents ($14,394.44), together with any other or further funds accumulated in the county treasury of said Macon County since the first day of January, 1886, after paying and discharging with interest the Warrant No. 15, in favor of the School Fund for seven thousand eight hundred and forty-eight dollars and ninety-nine cents ($7,848.99) of prior registration to the warrant of relator and said other warrants of even date and registration with relator's."

The anticipated grounds of complaint by the plaintiff in error against this order (no assignments of error having been filed) are:

1st. That it ordered the annulling of the apportionment of the county revenue for the year 1885 into separate and distinct funds.

2d. That it ordered an increase of tax levy for the year 1885, from 30c to 50c., by a further levy of 20c. on the $100 of valuation of taxable property, and the application of the proceeds of such levy to the payment of the relator's warrant and other like warrants.

3d. That it ordered the payment of the $14,394.44 found to be the balance in the treasury January 1, 1886, with further accumulations (after the payment of a prior registered School warrant), to the payment of the relator's warrant and other like warrants.

It is to maintaining the correctness of these three conclusions by the Court below that the following brief and argument on behalf of the relator is directed.

I.

The only assignments of error for present consideration relate to the Court below subsequent to the former mandate of this Court, filed March 4, 1884.

This point scarcely needs more than bare statement, but it will doubtless be controverted in spirit and effect, if not in form, by the plaintiffs in error, and hence the following cases are merely cited:

In Roberts vs. Cooper, 20 How., 468 (481), *per* Grier J., it was decided:

"It has been settled by the decisions of this Court that after a case has been brought here and decided, and a mandate issued to the court below, if a second writ of error is sued out, it brings up for revision nothing but the proceedings subsequent to the mandate. None of the questions which were before the Court on the first writ of error can be released or examined upon the record. To allow a second writ of error or appeal to a court of last resort on the same questions which were open to dispute on the first, would lead to endless litigation. In chancery a bill of review is sometimes allowed on petition to the

Court; put there would be no end to a writ if every obstinate litigant could by repeated appeals compel a court to listen to criticisms on their opinions or speculate of chances from changes in its members."

The above is quoted and followed in

Tyler vs. Magwire, 17 Wall, 284.

II.

The Court below was correct in ordering the annulling of the apportionment of the county revenue for the year 1885 into separate and distinct funds.

The bonds for the interest of which Huidekoper recovered his judgment in the court below, November 20, 1879, were issued under the authority of law expressly granted to the County Court of Macon County, in the 13th section of the charter of the Missouri and Mississippi Railroad Company, which has been so fruitful a source of protracted litigation, viz:

"SEC. 13. It shall be lawful for the corporate authorities of any city or town, or County Court of any county desiring so to do, to subscribe to the capital stock of said company, and may issue bonds therefor and levy a tax to pay the same not to exceed one-twentieth of one per cent. upon the assessed value of taxable property for each year."

This section first received judicial consideration by the Supreme Court of Missouri in 1867, in the case,

State of Missouri ex rel. vs. Macon County Court, 41 Mo. 453, which has been pronounced the most important decision ever rendered by the Supreme Court of that State. Thereby the power of Macon County to subscribe $175,000 to the capital stock of said Railroad Company was upheld and the County was commanded to issue bonds in payment thereof.

Special attention is asked to this case (41 Mo. 415) as it was the only one that had been decided upon this specific charter at the time of the date and the issue of these bonds, May 2, 1870; and this adjudication in conjunction with the statutes of Missouri then existing, must be accepted as the law of these bonds at the date of their issue, and also at the present time; however, the State statutes and decisions have been adversely modified since.

The Supreme Court of Missouri compelled by mandamus the County Court of Macon County to issue said obligations after having its attention called to the tax levy of 1-20 of one per cent. provided for in the same section conferring the power to issue; and it must have known that the sum provided by that section would not have been sufficient to pay the interest on so large an amount of bonds, and if the general funds of the county could not be resorted to, there must have inevitably been a default the first year in payment of interest.

Can it be that a Court of Justice would thus compel the issue of securities for which there was only such totally inadequate provision for payment?

Defendants' theory, supported by the later decisions of said Supreme Court, renders these bonds an excellent exemplification of "*Fiat money*," or of "*Coupon notes payable at will—the will of the maker*."

This theory "leaves the creditor," as is truly said by the Supreme Court of Arkansas in its opinion in this case, "*in a condition in which his rights live but in grace, and his remedies in entreaty only.*"

Curran vs. State of Arkansas, 15 How., 320.

This Court came to its first consideration of the same section of said charter in the case of

United States ex rel. vs. County of Clark, 96 U. S. 211. Therein a creditor of Clark County, having a judgment based upon interest coupons of bonds issued under the authority of said charter, sought by mandamus to get a warrant on the general fund of the County. which was refused by the Court below, but granted by this Court. It was decided that the relator was entitled to payment of his judgment out of the general funds of the County, so far as the special tax of one-twentieth of one per cent. was insufficient to pay it.

Special attention is asked to this case as it formed the basis of a line of decisions of this Court, by one of which the defendant in error attained the warrant he now seeks to enforce. The opinion of Mr. Justice Strong clearly enunciates what was intended to be decided, against the dissent of the Chief Justice and two Associates; and the record shows that a motion for releasing was made and supported by briefs and arguments of very able and distinguished counsel, Hon. George W. McCray and Hon. James O. Broadhead. But this Court adhered to its position by dismissing the motion, and that decision though often assailed has been uniformly adhered to and maintained.

And therein in reversal of the court below, a creditor of Clark County having a judgment based on interest coupons from similar bonds, was awarded a warrant on the annual funds of the County.

In pasing on said 13th section, it was decided that the clause "and levy a tax to pay the same, not to exceed one-twentieth of one per cent. assessed value of all the taxable property for each year," was a conferment of power to levy a special tax to enhance the credit and value of the bonds in addition to the taxes otherwise authorized for their payment, saying:

"That was a special tax *distinct from and in addition* to the ordinary tax, which, by other statutes, the county court was authorized to levy."

"To provide a particular fund as additional security, for the payment of a debt."

"An additional provision made for the payment of the new debt authorized."

"Probably the tax of one-twentieth of one per cent. was authorized with a view to give to them additional credit, to make them more salable."

"It is incredible that the legislature intended to deny to the purchasers of the bonds any right to look for payment beyond such meagre provision."

"We cannot think the legislature proposed rendering the bonds unsalable or almost worthless in the hands of those who might be so unfortunate as to hold them."

"Nor can we think that the legislature intended to set a trap for purchasers, and lead them to suppose they were obtaining valuable securities, when, in fact, they would obtain what was next to nothing."

That decision was rendered on the 7th day of January, 1878, and on the 19th day of March, 1878, an act of the General Assembly of the State of Missouri, entitled "An act for the better protection of the County revenue funds of the State" was approved.

Session laws 1879, p. 191, 2 Rev. St. of Mo., page 1329, Sec. 6818 *et seq.* Found also in Printed Record, p. 61.

Thereby it was provided:

SEC. 1. County Court to appropriate, apportion and subdivide revenue.

SEC. 2. Order, how made; funds, how drawn and applied.

SEC. 3. County revenue to be separated and subdivided.

SEC. 4 Warrants, how drawn; demands, how presented.

SEC. 5. Repealing all inconsistent acts.

SEC. 6 Emergency clause.

The State Constitution provides, 1 Rev. St. LXIII:

"SEC. 36. No law passed by the General Assembly shall take effect or go into force until ninety days after the adjournment of the session at which it was enacted, unless in case of an emergency (which emergency must be expressed in the preamble or in the body of the Act) the General Assembly shall, by a vote of two-thirds of all the members elected to each house, otherwise direct. * * *"

The said statute of March 19, 1878, provided:

"SEC. 6. The proper expenditure of the revenue collected for purposes, their appropriation, apportionment and subdivision for the purposes for which they are levied and collected, and the maintenance of the credit of county governments creates an emergency requiring the Act to take effect at once; therefore, this Act shall take effect and be in force from and after its passage."

It is patent that the so called "emergency" was created in the minds of the Missouri law-makers by the recent decision of this Court, and the fact that by act of Congress the United States Curcuit Court was to hold its regular term at Jefferson City on the 3d Monday of March. This legislation was evidently designed to meet the exigency of the situation, and give "protection" to Clark and other counties from the effect of the above named decision of this Court, even at the ex-

pense of overthrowing the long established methods of administering the public revenues. While the first section requires the apportionment of the revenue into specific funds, the other sections are clearly designed to protect the treasury against creditors holding warrants on the general funds.

The judicial department of Missouri was also invoked for similar relief, which was designed to be granted by the decision in the case of State *ex rel.* Watkins vs. Walker, 68 Mo. 29, which has always been cited and relied on by Macon County, and probably will be on the present hearing, but has never been accorded any deference. This was in fact a collusive suit, designed to overthrow the decision of this Court in United States vs. the County of Clark, 96 U. S., 211, and confessedly to affect suits pending in the United States Circuit Court for the Western District of Missouri, and to forestall the decisions of this Court in cases pending.

This is patent from the records (see certified copy and printed pamphlet).

January 7, 1878, the Clark County case was decided:
January 25, 1878, information filed for mandamus in the Macon County Circuit Court, - - - - - - page 1
Same day, alternative writ issued, - - - - - - - 3
Same day, returns made by respondents, - - - - - 5
Same day, demurrer to returns by relator, - - - - - 11
Same day, case submitted to Circuit Court, - - - - 12
Next day, judgment rendered for respondents, - - - - 12
April 10, 1878, respondents granted relator a warrant for the amount of his judgment, - - - - - - - 44
April 29, 1878, transcript filed in State Supreme Court, - - 14
Same day, submission by agreement under 21st rule, - - - 14
Same day, relator's brief filed, consisting of two pages, and citing only the Clark County case, - - - - - - 15
May 13, 1878, respondents move to have case advanced, which was granted, on the express grounds of pending litigation in the Federal Courts against them in two cases, one of which was case No. 858 of October term, 1878, *in this Court* (see 99 U. S., 592), - - - - - - 18
October 30, 1878, decision of Supreme Court rendered. Napton, J., not sitting, and Hough, J., in part dissenting, - 23

May 6th, 1885, the Macon County Court ordered:

That for taxes of the year 1885 upon every $100 valuation, etc., there be levied "for county fund 30 cents," [Printed Record, p. 33]: and that the county revenue levied and collected for the year 1885 be "apportioned and

subdivided as contemplated under and by virtue of section 6819 of the Revised statutes of Missouri, at page 1339. as follows:

To the Salary Fund, 1-3 of said Revenue.
To the Contingent fund, 1-5 of said Revenue.
To the Poor House Fund, 1-5 of said Revenue.
To the Road and Bridge Fund, 1-6 of said Revenue.
To the Jury and Election Fund, balance of said Revenue.
And that he certify this order to the Treasurer."

It is admitted that such order of sub-division was pursuant to the act of March 19, 1878, *supra*, and that may be wise and valid legislation except in so far as it interferes with the vested obligations and remedies of creditors. But the present case falls distinctly within that exception and limitation. This creditor's bonds existed prior to the enactment of that statute and thereupon he was entitled to, and in fact got his judgment and warrant on the general funds of the County. But when he seeks the legal fruition of his litigation through his warrant, lo! and behold, there are to be no further general funds which can be held or rendered applicable thereto. Under form of law the County Court reduces the revenue to special funds, evidently to defeat the creditor of the legitimate result of his victory in this Court, by simply abolishing "the general fund" and creating specific funds, and among them one called for want of a better name, "the contingent fund." The propriety and necessity of setting aside this subdivision becomes patent if the fund when collected cannot be reached in the treasury by reason of these newly made barriers, and there will be no avail to the creditor holding his warrant on the general funds. The effect of the statute is substantially to impair the remedy and thus the obligation of the County, and therefore it and all proceedings on it must fall. Accordingly the action of the Court below in setting aside this sub-division and apportionment is correct and should be affirmed.

And again, by the statutes of Missouri prior to the issue of these bonds, and at the time thereof, and in fact down to the time of the above stated statute of March 19, 1878, the County Courts had legislative power to levy special taxes for Roads and for the Poor, distinct from and in addition to the levies for county revenue. This is shown by the statutory provisions set forth in the special finding of facts (page 39), which grant power to County Courts to levy:

For Roads, not exceeding 4 mills on the dollar.
For Poor-house, a sufficient amount.

The bridges and insane were to be maintained out of "the county treasury," or in other words, out of the general funds.

The Macon County Court, so far as this creditor is concerned, is empowered to levy 50c. for county revenue, and for roads and poor additionally. Whereas under said statute of 1879 the county court has

sought to appropriate its general revenue to Roads and Poor and then to set up by its returns herein that all its legislative powers of taxation have been exhausted. This is manifestly incorrect, and there resides in the respondent an unused power of taxation which should be enforced in favor of the creditors. Hence for this further reason said apportionment was correctly set aside and the order of the Court below to that effect should be affirmed.

III.

The Court below was correct in ordering an increase of tax levy for the year 1885, from 30c. to 50c. by a further levy of 20c. on the $100 of valuation of taxable property, and the application of such levy to the payment of the relator's warrant and other like warrants.

The County Court in May, 1885, levied on the $100, "for County fund, 30 cents," [Printed Record, p. 33], when it was authorized by law, both when the bonds were issued and at the time of the levy, to levy 50c. on the $100. It was to compel the exercise of this unused power of taxation to the extent of 20c. on the $100, that the order of the Court below was properly made, on behalf of this and other general warrant creditors. The authority to levy 50c, as stated, is found in the Missouri statutes, incorporated for convenience in the special finding by the Court below, [Printed Record, p. 26, *et seq.*]

4. That the county court of Macon county has had conferred upon it power and authority to levy taxes irrespective of the special tax named in the 13th section of said "Act to incorporate the Missouri & Mississippi Railroad Company" by the following statutes of the General Assembly of the State of Missouri:

A. "General statutes of Missouri 1865, page 121, chapter 13, section 76.

"The several county courts are empowered to levy such sums as may be necessary to defray the expenses of their respective counties by a tax upon all the property and licenses made taxable by law for State purposes; but the county tax shall, in no case, exceed the State tax on the same subject of taxation more than one hundred per centum for the same time."

B. "General Statutes 1865, page 53. An ordinance for the payment of State and railroad indebtness, approved April 8, 1865, section 6.

"The General Assembly shall provide by law for the payment of all State indebtedness not hereinbefore provided for, and for this purpose a tax of one-quarter of one per centum on all real estate and other property and effects subject to taxation shall be assessed and collected. * * * * *

C. General Statutes 1865. page 95, title V, of the assessment and collection of the revenue, chapter II.

SECTION 1. "For the support of the government of the State, the payment of public debt, and the advancement of the public interest, taxes shall be levied on the following persons and objects: All male persons over the

age of twenty one and under fifty years of age, and on all property, real and personal, except as stated in the next section."

SEC. 7. "The annual tax upon all subjects of taxation, exclusive of taxes for the union military fund, shall be at the following rates: First, on all male persons over twenty-one and under fifty years, one dollar; second, on lands and other property, real and personal, made taxable by law forty cents on the hundred dollars of the assessed value thereof."

D. Laws 1867, p. 168.

SEC. 1. "That in pursuance of the requirements of the sixth section of the ordinance of the convention adopted April 8, 1865, there is hereby levied and shall be assessed and collected for the years 1867 and 1868 a tax of four-tenths of one per-cent. of the assessed value of all the real and other property subject to taxation in this State." * * * * *

Approved March 12, 1867.

E. Laws of 1867, p. 157.

SEC. 1. "That the annual taxation for the years 1867 and 1868 for the purpose of revenue shall be at the following rates: First, on all male white persons over twenty-one and under fifty-five years of age, fifty cents; second, on all lands and other property, real and personal, made taxable by law twenty-five cents on the one hundred dollars of the assessed value thereof."

Approved March 12, 1867.

F. Laws of 1868, p. 174.

SEC. 1. "That section 1 of an Act entitled, an Act to provide for the the payment of the interest upon the State debt, approved March 12, 1867, be and the same is hereby amended to read as follows: Section 1. That in pursuance of the requirements of the sixth section of the ordinance of the convention adopted April 1, 1865, there is hereby levied and shall be assessed and collected for the year 1868 a tax of one-fourth of one per cent. on the assessed value of all the real and other property subject to taxation in this State. * * * *

G. Laws of 1868, p. 142.

SEC. 2. "That section seventy-six of chapter thirteen, general statutes, be amended to read as follows: The several county courts are empowered to levy such sums as may be annually necessary to defray the expenses of their respective counties by a tax upon all property and licenses made taxable by law for State purposes, except what is herein excepted by this Act; but the County tax shall in no case exceed the State revenue on the same subjects of taxation more than one hundred per centum for the same time."

H. Laws of 1869, p. 81.

SEC. 1. "There shall be annually levied, assessed and collected on the assessed value of all the real estate and other property subject by law to taxation in this State one-fourth of one per centum for State revenue and one-fourth of one per centum for the payment of all State indebtedness."

Approved February 16, 1869.

I. Laws of 1872, p. 84. See sections 166 and 167.

SEC. 165. "The several county courts are empowered to levy such sums as may be annually necessary to defray the expenses of their respective counties by a tax upon all property and licenses made taxable by law for State purposes, except what is herein excepted by this Act, but the county tax shall

in no case exceed one-half of one per cent. on all taxable property and on all licenses made taxable by law, the county tax shall not exceed the State revenue tax more than one hundred per centum for the same time. * * * * * The State interest tax not to be construed to be State revenue tax."

Approved January 8, 1872.

2 Wagner's Stat., p. 1193, § 165.

J. Constitution of Missouri, 1 Rev. Stat., p. 80, Art. X, § 11.

"For county purposes the annual rate on property in counties having six million dollars or less shall not in the aggregate exceed fifty cents on the one hundred dollars valuation, * * * * said restrictions as to rates shall apply to taxes of every kind and description, whether general or special, except taxes to pay valid indebtedness now existing, or bonds which may be issued in renewal of such indebtedness."

K. Laws of 1879, p. 193.

" For county purposes the annual tax on property not including taxes for the payment of valid bonded indebtedness or renewal bonds issued in lieu thereof shall not in any county in the State exceed the rates herein specified. In counties having six million dollars or less said rate shall not exceed fifty cents on the hundred dollars valuation."

Approved May 31, 1877.

2 Revised statutes, p 1337, 6807.

By Sec. 5 of the special findings, [Printed Record, p. 59] it is stated, "The said County of Macon has an aggregate assessed valuation of less than six million dollars."

Thus it appears, *supra*, that when these bonds were issued, May 2, 1870, that the Missouri statute provided:

The several county courts are empowered to levy such sums as may be annually necessary to defray the expenses of their respective couties by a tax upon all property, etc. * * *; but the county tax shall in no case exceed the state revenue on the same subjects of taxation more than one hundred *per centum* for the same time.

And at that time the State revenue tax was authorized at one-fourth of one per cent. H., *supra*.

Further, it is clearly shown that through all this legislation during 24 years, the power exists to levy 50c. on the $100 for County purposes.

Perhaps the controversy will turn not on the correctness of this statement as to the extent of the legislative power of the Macon County to levy 50c. on the $100, but on the fact whether it has or has not been exercised. It appears by the respondents' amended return [Printed Record, p. 32]:

" Respondent avers that said Macon County is now and has for a long time been duly organized under the general laws of Missouri providing for township organization, and that the affairs of said County are now managed and controlled under and by virtue of the said statute providing for township organization, and the general laws of the State of Missouri; avers that said

County Court has caused to be levied for the year 1885 upon all the taxable wealth of said County of whatsoever kind or description the full sum of fifty cents on the one hundred dollars valuation thereof, as will fully appear from exhibits A, B and C hereto attached and made a part of this return, which sum is the greatest amount that said Court is permitted to levy for any one year by the Constitution and the laws of the State of Missouri, that said tax is levied and divided as follows, to-wit: For county revenue, the sum of thirty cents on the one hundred dollars valuation. which is subdivided as alleged in relator's petition; for township and road tax, the sum of twenty cents on the one hundred dollars valuation. Wherefore respondent says it has levied the full amount of tax authorized by law for the year 1885, * *"

Thus while in one sentence it is averred that said County Court has caused to be levied for the year 1885 the full sum of 50c. on the $100, yet it is admitted that thereof only 30c. was for County revenue, and 20c. is alleged to be for "township and road tax," and to sustain the averment, reference is made to exhibits A, B and C. [Printed Record, p. 33 to 36]. From A it appears that levy is made of only 30c. "for County fund," which by B is shown to be sub-divided and apportioned as aforesaid; and by B, page 34, simply that the respective townships had levied various sums for township and road purposes, which, by some coincidence, in each instance amounted to 20c. on the $100.

The special finding of facts (page 63) states:

The county of Macon is organized under the statutes of Missouri relative to township organization, found in 2 Revised Statutes, p. 1458 *et seq.*, section 7476, (p. 1464).

"In each township in this State organized under the provisions of this chapter there shall be a board of directors composed of the township trustee and justice of the peace whose duty it shall be * * * third, to levy all taxes for township road and bridge purposes." * * *

SEC. 7481. (Page 1465.) "The money necessary to defray the township charges of each township shall be levied on the taxable property in such township in the manner prescribed in the general revenue law for State and county purposes."

Acts 1881, p. 217, section 7485. "The township board of directors shall make an account of the amount of money necessary to defray township expenses during the next ensuing year; said account shall be made out not more than sixty nor less than twenty days prior to the meeting of the county court at which the assessment for county purposes is made, said account shall be signed by the president of the board and attested by the clerk, and filed with the clerk of the county court, on or before the first day of said court, who shall cause the same to be placed upon the tax book of said township: provided, that said expense shall not, together with the amount levied for road purposes and special bridge tax, exceed in any one year twenty cents on one hundred dollars valuation."

From these statutes it is patent that the County Court's power and

duty to make "assessment for County purposes," is recognized; while the levy authorized for township and road purposes and special bridge tax was to be made by township officers. Neither in form nor substance is such levy or the product thereof to be deemed a County levy or revenue. Whether such township taxation was constitutional or not matters nothing; it clearly was not County taxation, and the exercise of such power by the township officers cannot be regarded as the exercise of any part of the power in the County Court to levy 50c. on the $100. That power as has been shown existed, aud was exercised only to the extent of 30c.. and thus there was left an unexpended power to levy 20c. additional, as the Court below ordered. The township levies are not taxes levied by the County Court, nor for County purposes. True it is that the townships in the aggregate constitute the County, but these levies are made by the respective township boards, and the orders of the County Court recognizing them and directing them to be extended on the tax books is purely ministerial. Neither the law nor these acts make such township and road tax any part of the County revenue proper, authorized by the statutes above cited. Hence the Court below ordered correctly the increase of the levy by 20 cents, and on this point should be affirmed.

IV.

The Court below was correct in ordering the payment of the $14,394.-44, found to be the balance in the treasury January 1, 1886, with further accumulations to the payment of the relator's warrant and other like warrants.

On the 24th day of February, 1886, pursuant to an order of Court, the respondents filed in the Court below a financial statement [Printed Record, p. 37] of the receipts and expenditures of the County revenue of Macon County for the fiscal year, ending December 31, 1884, showing aggregate of receipts in 1884 and 1885 to be $35,656.-26, which evidently does not include aught levied by the township boards, against which is charged to Treasurer's vouchers on settlement the sum of $21,261.82, leaving in the treasury about two-fifths of the aggregate or the sum stated to be.

"Balance on hand January 1, 1886, $14,394 44."

Excuse is made for not bringing the statement down to date on the ground of inconvenience.

The statement shows that for each respective year the revenues and expenditures were sub-divided and apportioned pursuant to said law of March 19, 1878, to five special funds, called: Contingent, Poor House, Salary, Jury and Election and Road and Bridge Fund, and the

recapitulation thereof shows the aggregate amount of the balances to leave the said "Balance on hand January 1, 1886, $14,394.44.

The relator's warrant on the general funds was dated the 29th day of April, 1884, and on the same day was presented to the treasurer for payment and by him endorsed and registered, according to law. By the statutes of Missouri at the time the bonds upon which the relator's judgment was based were issued, provided the following mode of administering the County revenue and finances.

County Court, 1 Wagner's statutes, 439.
County Treasurer's do 409.

PAGE 441, SEC. 9: "The said [county] courts shall moreover have the control and management of the property, real and personal, belonging to the county; and shall have full power and authority to purchase or receive by donation any property, real or personal, for the use and benefit of the county, to sell and cause to be conveyed any real estate, goods or chattels belonging to the county, appropriating the proceeds of such sale to the use of the same, and to audit and settle all demands against the county."

PAGE 414, SEC. 28: "Each county conrt shall have power to audit, adjust and settle all accounts to which the county shall be a party; to order the payment out of the county treasury of any sum found due by the county, to enforce the collection of money due by the county, &c., &c."

PAGE 415, SEC. 31: "When the court shall ascertain any sum of money to be due from the county, they shall order their clerk to issue a warrant therefor in the following form:

Treasurer of the County of ————,

Pay to ———— ————
———— dollars out of any money in the treasury appropriated for county expenditures [or express the particular fund as the case may require]. Given at the court house this ——— day of ——— 18—. By order of the County Court. A. B., President.

Test, C. D., Clerk."

SEC. 32. "Every such warrant shall be drawn for the whole amount ascertained to be due to the person entitled to the same; and but one warrant shall be drawn for the amount allowed to any person at one time and shall be written or printed in Roman letters without ornament; it shall be signed by the president of the county court whilst the court is in session, attested by the clerk, and numbered progressively throughout the year."

PAGE 409, SEC. 8. "He [the county treasurer] shall procure and keep a well bound book, in which he shall make an entry of all warrants presented to him for payment, which shall have been legally drawn for money by the county court of which he is the treasurer, stating correctly the date, amount, number, in whose favor drawn, and the date the same was presented—and all warrants so presented shall be paid out of the funds mentioned in such warrant, and in the order in which they shall be presented."

And thus the statutes of Missouri remain at the present time, except so far as they have been modified as aforesaid to meet "the emergency," by the law of March 19, 1878.

The defendant in error, relator below, claimed below that the total amount in the treasury should be applied to his warrant. [Relator's Motion, p. 497]. It is evident that the general warrant, alleged by the respondent's answer, [Printed Record, pp. 50 and 51] to have been issued to the Macon County school fund for the sum of $7,848.99, and registered for payment prior to the relator's said warrant, is identical with the warrant set forth in the respondent's sworn statements [p. 47] of warrants issued on the general fund of Macon County, as Number 15, issued to State of Missouri, for said exact sum of $7,848.99. Thus the priority alleged in the return in favor of such warrant is directly negatived by the sworn statement. And while the warrants set forth in the said statements on page 47, may have been issued as therein stated, yet the defendant in error claimed below, and now still claims that it was entitled to precedence in payment over such others by reason (1) of its having been issued as the result of the aforesaid legal proceedings whereby he acquired the same, and (2) further by reason of its being prior in number, and standing first on the record of the unpaid registered warrants, payable out of said general funds of Macon County. Both these positions were ignored or overruled by the Court below, in its order that the respondents cause to be paid *pro rata* upon the relator's warrant, and the other like warrants the rest and residue of the said $14,391.44, after paying and discharging, with interest, the warrant No. 15, in favor of the school fund for $7,848.99 of prior registration to the warrant of relator, etc.

To this conclusion of the Court below the plaintiffs in error interposed three objections, which were overruled, as appears by the opinion of the learned Curcuit Judge, [page 66]:

First. That orders are to be paid in the order of priority, and that no warrant can be paid until it is surrendered to the treasurer.

No good reason can be advanced for such position, and the practice of requiring partial payments upon judgments has uniformly prevailed in the Missouri Circuits. Public funds allowed to accumulate unapplied, are known by common experience, wherein Macon County itself has shared, to be in jeopardy of being squandered or embezzled and lost. In the case at bar, *quere*, after the lapse of four years, while the judgments and warrants draw interest, whether the fund in controversy is safely and productively invested.

This objection was succinctly disposed of by the Court below, per Brewer, Circuit Judge, as follows:

> "As the warrants were all registered at the same time it follows that none could be paid until there was money enough in the treasury to pay all. This would compel the treasurer to retain these funds until they had accumulated nearly if not quite two hundred thousand dollars. This is absurd. Whenever any reasonable amount has accumulated, it should be distributed, and the order of the court is full protection to the officer."

Secondly—The respondents objected that the money in the treasury was needed for current county expenses.

The relator's warrant was issued, presented for payment, endorsed and registered according to the Missouri Statutes on the 29th of April, 1884. Therefore it was entitled to payment in priority over other warrants, whatever they might be. The fact that the fund was subdivided under different names mattered not. That was a mere matter of form and book-keeping, well enough and unobjectionable until it is interposed to defeat the rights of creditors. The futility of such subdivision to adversely affect this relator, whether as to taxes already levied and collected, or as to those yet to be, has already been shown in the first portion of this brief.

In rendering its former decisions on awarding these warrants on the general funds the Court was fully advised of the legal character such warrants would have under the Missouri statutes. The manifold inconveniences and evils that would fall upon the public as the result of having to meet such warrants in the order of their presentation has been repeatedly emphasized. But in the face of predictions of dire disasters, this Court has, as above shown, adhered to the original position taken at the outset, as clearly shown by the opinion of Mr. Justice Strong in

United States ex rel etc., vs. County of Clark, 96 U. S., 211.

In that case the original information filed by Johnson, relator, and of course found in the transcript, set forth the sections of the Missouri statutes, and the brief filed on his behalf in this Court at page 4 called attention to the Section 31 *supra*, which provides: "And all warrants represented shall be paid out of the funds mentioned *and in the order in which they shall be presented.*

By examination of the records and briefs of the other cases in point,

County of Macon vs. Huidekoper, 99 U. S.. 592, and

Macon [not Mason] *County Court vs. Huidekoper, 109 U. S., 229*,

it will fully appear that the provision of the Missouri statute requiring the payment of warrants in the order of presentation was pleaded and emphasized as an objection to the issuance of such warrants.

In deciding the last above cited case, together with four others of like character, Mr. Chief Justice Waite said:

"This [the Clark County case in 96 U. S.] we all agree means that the payment of this balance is demandable out of funds raised by taxation for the ordinary county uses. The mandamus applied for in that case was one requiring the county court and the justices thereof to direct the clerk of the county to draw a warrant on the county treasurer for the balance of his judgment unpaid, so that he might be enabled on its presentation, to have it paid in its order out of the county treasury; and there was no fund out of which the payment could be made, except that raised by taxation for ordinary county uses. By the judgment of this court such a mandamus was awarded."

After allusion to subsequent cases adhering to this conclusion, a judgment of affirmance was ordered.

This Court in making said original Clark County decision on full argument and divided bench, and subsequently, in adhering thereto unanimously in a line of cases, on the principle of *stare decisis*, it is evidently contemplated that the general warrant when drawn should mean what it said, and have attached to it all the rights and properties incident to it at the time the bonds were issued, and when that decision was rendered.

Surely this means that it was expected and intended by this Court that the warrant this Court required to be issued on the general funds should be paid out of the general funds according to law. And that is precisely what the Court below ordered and what the defendant in error now seeks to uphold.

Upon the argument of those well resisted cases it was insisted that no such thing was known in Missouri law or financial administration as "a general warrant," or 'a warrant on the general funds." This was not, however, discovered until after the Clark County decision by this Court; and that it is incorrect in point of fact is shown by the statutes above cited relative to Bridges and Insane, found in the special findings of fact, pages 60 and 61. Special funds were created by the Act of March, 1877, and between the legislature and State Supreme Court, the financial administration was suddenly revolutionized to meet the emergency.

In County of Ralls vs. Douglass, 105 U. S. 728, per Waite C. J., upon a suit to recover judgment upon interest coupons it was said:

"Such being the condition of the law on the subject down to April, 1878, we do not feel inclined to reconsider our former rulings and follow the later decisions of the Supreme Court of the State in State vs. Garouette (67 Mo. 445) and State vs. Dallas County (72 id. 329), where this whole line of cases was substantially overruled. The bonds involved in this suit were all in the hands of innocent holders when the law of the State was so materially altered by its Courts. In our opinion the rights of the parties to this suit were to be determined by the law as it was judicially construed to be when the bonds in question were put on the market as commercial paper. Douglas vs. Pike County, 101 U. S. 687."

Perhaps resistance will be made to the payment of aught upon the relator's warrant, on the ground that the funds are needed for public purposes. The record does not show that such was the fact, as there was no demurrer or evidence or special finding on that subject. In support thereof will probably be cited,

East St. Louis vs. Zebley, 110 U. S. 321.

Clay County vs. McAleer, 115 U. S. 616.

An examination of the former case shows that the Court below ordered the City of East St. Louis, Illinois, to levy and collect one per

cent. per annum, taxes (which was to the full limit of its statutory power) for 1883, and subsequent years, until the relator's debt was fully paid; and further ordered that said city annually appropriate $3,000 out of three-tenths of said one per cent levy, and furtherthe sum of $10,000 out of the remaining seven-tenths of said one per cent. levy, as a special fund for the payment of said judgments until fully paid. The last part of this order was reversed on the grounds stated by Mr. Justice Matthews, that the Court below undertook limiting the expenditures of the city for its general purposes for future years, to create in advance an annual surplus of $10,000, which it appropriated towards its debts To create this and apply for a series of years, and in advance was held to be an attempt to foresee every exigency, and to provide against every contingency that may arise to affect the public necessities. Hence that order was reversed; but the statutes and the facts are so entirely different from the case at bar, no analogy can be drawn therefrom.

In the case of Clay County in Iowa, 115 U. S, 616, the Court below sustained a demurrer to the County's answer that the full amount of taxes allowed by law for the ordinary revenue of the County was levied for the years 1880 and 1881, and that these levies were all required, and more, too, for the proper maintenance of the County government; that no part of the revenue for these years could have been devoted to the payment of the judgment " without seriously impairing the efficiency of said government;" " that the maximum levy for said purpose for the year 1882 will not be sufficient to pay the ordinary current expenses of said County, and that no part thereof can be applied for the payment of said judgment without seriousiy impairing the efficiency of said County government." Notwithstanding the admission of record of the truth of these statements the Court below ordered a levy of one mill tax to pay the debt, and it was that order this Court reversed.

Upon the admitted facts this Court simply relied upon and followed the early and ruling case, Coffin vs. Davenport, 26 Iowa, 515.

Again the statutes and facts are so entirely different from the case at bar, no analogy can be drawn therefrom. Here is no demurrer or aught in the special findings relative to public necessities. By the respondent's sworn statement it is shown that out of the revenues of 1884 and 1885 the sum of $21,261.82, was expended and the amount left in the treasury was only the said balance on hand January 1, 1886. The county treasurer perhaps receives warrants in payment of taxes, thus avoiding the creation of accumulation.

Harshman vs. Winterbotham, 123 U. S., 216.

In City of Galena vs. Amy, 5 Wall, p. 705, a mandate was sought to compel the levy of a tax to pay a judgment, and the relator demurred to the return, which stated *inter alia:*